



State of Alaska

PERS Statutes

August
2003

Including the:

- ✧ *Public Employees' Retirement System,*
- ✧ *Supplemental Benefits System,*
- ✧ *Group Health and Life Insurance Plan, and the*
- ✧ *Deferred Compensation Plan for State Employees.*

*The statutes in this handbook
are current as of August 2003.
Amendments occurring after that date may
be found in the Alaska Statutes and
Alaska Administrative Code.*

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Alaska Statutes

TITLE 39. PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 35. PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF ALASKA

Article

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2. Membership (secs. 39.35.120—39.35.158)
3. Contributions by Employees (secs. 39.35.160—39.35.240)
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5. Service (secs. 39.35.300—39.35.360)
6. Benefits (secs. 39.35.370—39.35.547)
7. Participation by Political Subdivisions and Public Organizations
(secs. 39.35.550—39.35.650)
8. General Provisions (secs. 39.35.660—39.35.690)

Cross References: For group life and health insurance for retired public officers and employees, see AS 39.30.090. For retirement incentive program, see Sec. 21-35, ch. 4, FSSLA 1996 in the Temporary and Special Acts.

Editors Notes: In general, a person's right to benefits under the state's public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the teachers' retirement system. The user is advised to ascertain which version of a particular statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

This chapter was extensively amended by ch. 82, SLA 1986. Sections 57-58, ch. 82, SLA 1986, as amended by Sec. 34, ch. 106, SLA 1988, provide: "Sections 16, 22-23, 25-27, 42, 44, 45, and 50 of this Act apply only to members first hired under the Public Employees' Retirement System after June 30, 1986. Changes in the Public Employees' Retirement System enacted in this Act that require a reduction in benefits to members of the retirement system apply only to members who are first hired under the retirement system after June 30, 1986. . . The amendments made by secs. 46 and 49 of this Act apply only to members first hired under the Public Employees' Retirement System after December 31, 1986. . . Other sections of this Act apply to all members of the Public Employees' Retirement System, regardless of the date of hire."

AG Opinions: This fund does not represent an unconstitutional dedication of public funds under Sec. 7, art. IX, of the state constitution, as that section of the constitution contains an implied exception for pension fund contributions. November 30, 1982 Op. Att’y Gen.

ARTICLE 01. ADMINISTRATION

SEC. 39.35.010. PURPOSE AND EFFECTIVE DATE.

(a) The purpose of this chapter is to encourage qualified personnel to enter and remain in the service of the state or a political subdivision or public organization of the state by establishing a system for the payment of retirement, disability, and death benefits to or on behalf of the employees.

(b) The Public Employees’ Retirement System of Alaska is hereby created. The system created becomes effective as of January 1, 1961, at which time contributions by the state and its employees begin.

(c) The retirement system established by this chapter is intended to qualify under 26 U.S.C. 401(a) and 414(d) (Internal Revenue Code) as a qualified retirement plan established and maintained by the state for its employees and for the employees of political subdivisions, public corporations, and public organizations of the state, and for the employees of other employers whose participation is authorized by this chapter and who participate in this system.

History: (Sec. 2 ch 143 SLA 1960; am Sec. 25 ch 13 SLA 1980; am Sec. 27 ch 59 SLA 2002)

Amendment Notes: The 2002 amendment, effective June 20, 2002, re-wrote this section.

Decisions: Cited in *State, Pub. Employees Retirement Bd. v. Cacioppo*, 813 P.2d 679 (Alaska 1991).

Collateral Refs: 67 C.J.S. Officers, Sec. 243 - 249.

Article Notes: Administrative Code. For administration, see 2 AAC 35, art. 2.

SEC. 39.35.011. EXCLUSIVE BENEFIT.

The corpus or income of the assets held in trust as required by the system may not be diverted to or used for other than the exclusive benefit of the members or their beneficiaries.

History: (Sec. 28 ch 59 SLA 2002)

Effective Date Notes: Section 50, ch. 59, SLA 2002 makes this section effective June 20, 2002, in accordance with AS 01.10.070(c).

SEC. 39.35.020. ADMINISTRATION.

The commissioner of administration is responsible for the administration of the system and for carrying out this chapter. In addition, the commissioner shall

- (1) maintain the accounts of the system;
- (2) make payments for the various purposes specified;
- (3) submit periodic reports or statements of account that are needed;
- (4) issue a statement of account to an employee requesting it showing the amount of the employee's contributions to the system;
- (5) as soon as possible after the close of each fiscal year, and not later than six months after the close of each fiscal year, send to the governor, the legislature, and the board an annual statement on the operations of the system containing
 - (A) a balance sheet;
 - (B) a statement of income and expenditures for the year;
 - (C) a report on an actuarial valuation of its assets and liabilities;
 - (D) a summary of assets held in the pension fund listed by the categories of investment, as provided by the Alaska State Pension Investment Board;
 - (E) other statistical financial data that are necessary for a proper understanding of the financial condition of the system and the result of its operations;
- (6) establish a public employees retirement trust fund in which the assets of the system shall be deposited and held;
- (7) engage an independent certified public accountant to conduct an annual audit of the system's accounts and the annual report of the system's financial condition and activity;

(8) report to the board concerning the condition and administration of the system and distribute the report to the members of the system.

History: (Sec. 31 ch 143 SLA 1960; Sec. 50 ch 13 SLA 1980; am Sec. 75 ch 137 SLA 1982; am Sec. 29 ch 141 SLA 1988; am Sec. 15 ch 31 SLA 1992)

Amendment Notes: The 1992 amendment, effective July 1, 1993, substituted “Alaska State Pension Investment Board” for “Commissioner of Revenue” in subparagraph (5)(D) and made a stylistic change.

Decisions: Quoted in *Holmberg v. State, Div. of Risk Mgt.*, 796 P.2d 823 (Alaska 1990).

SEC. 39.35.030. PUBLIC EMPLOYEES RETIREMENT BOARD.

(a) There is established a Public Employees’ Retirement Board as provided in this section.

(b) Three public members are appointed by the governor to serve at the pleasure of the governor for six-year staggered terms. One of the public members must be or have been employed by an employer other than the State of Alaska. The governor shall fill a vacancy in an unexpired appointive term by appointment for the remainder of the term.

(c) Two members of the board must be members of the system elected by members of the system. Elections shall be conducted by the board. The candidate who receives the most votes cast in the election is elected to the seat. If two seats are to be filled at the election, the candidate who receives the most votes cast and the candidate who receives the next most votes cast are elected to the seats. The term of office of an elected member is six years. The governor shall fill a vacancy in an unexpired elective term by appointment for the period remaining before the next regularly scheduled election held under this subsection.

(d) The governor shall appoint two physicians authorized to practice medicine in the state to serve as members of the board and two physicians authorized to practice medicine in the state to serve as alternate members to the physician members of the board. The physicians are members of the board only for the purpose of hearing appeals to determine medical eligibility for disability benefits under AS 39.35.400 and 39.35.410. If the administrator, after making a reasonable effort to secure the participation of two physician members or alternates to serve on a disability appeal, is unable to do so, the board may hear the appeal with the participation of only one physician member or alternate, in which case, for purposes of a quorum, the board shall be considered to have only one physician as a member. The Public Employees’

Retirement Board and the Teachers' Retirement Board may submit to the governor a list of recommended physicians to serve on the board. Physician members serve at the pleasure of the governor.

(e) Members of the board appointed under (b) of this section or elected under (c) of this section are entitled to receive for their services on the retirement board an honorarium equal to the honorarium provided to trustees of the Alaska State Pension Investment Board under AS 37.10.250. Physician members of the board are entitled to hourly compensation for their services at a rate to be determined by the commissioner of administration. The rate of compensation shall be consistent with the physicians' normal hourly earnings. All members of the board are entitled to travel expenses and per diem when it is necessary to travel.

History: (Sec. 32 ch 143 SLA 1960; am Sec. 14, 15 ch 128 SLA 1977; am Sec. 3 ch 40 SLA 1990; am Sec. 28 - 31 ch 68 SLA 2000)

Cross References: For transitional provisions relating to the 1990 amendment of this section and repeal of AS 39.36, see Sec. 5, ch. 40, SLA 1990 in the Temporary and Special Acts.

For transitional provisions relating to the 2000 amendment of (b) of this section by sec. 28, ch. 68, SLA 2000, see sec. 59, ch. 68, SLA 2000 in the 2000 Temporary and Special Acts.

Amendment Notes: The 2000 amendment, effective August 20, 2000, rewrote subsections (b) and (d); in subsection (c) deleted "a majority of the votes cast by" following "elected by" in the first sentence, added the second and third sentences, and rewrote the last sentence; and in the first sentence in subsection (e) substituted "appointed under" for "identified in" and substituted "are entitled to receive for their services on the retirement board an honorarium equal to the honorarium provided to trustees of the Alaska State Pension Investment Board under AS 37.10.250" for "do not receive compensation for their services on the board."

Decisions: Cited in *Hester v. State, Pub. Employees' Retirement Bd.*, 817 P.2d 472 (Alaska 1991).

SEC. 39.35.040. POWERS AND DUTIES OF BOARD.

The Public Employees Retirement Board has the following powers and duties:

(1) to hold regular meetings and special meetings considered necessary; all meetings are open to the public, and the board keeps a full record of

all its proceedings; the board may, by regulation, define a quorum for the conduct of its business, including appeals and disability appeals;

(2) to adopt, with modifications it considers proper, regulations recommended by the administrator for carrying out this chapter;

(3) to consider and adopt resolutions on matters referred to it by the administrator in connection with changes in policy and revisions of this chapter;

(4) to act as an appeals board, hold hearings at the request of an employer, employee, surviving spouse, or a beneficiary on decisions made by the administrator, and submit its findings to the administrator;

(5) to have prepared, at least biennially, an actuarial valuation of the total obligations under the system of each employer and, on the basis of the valuation and in time for incorporation of the results in the state budget, to certify to the appropriate budgetary authorities of each employer:

(A) an appropriate contribution rate for all employers; and

(B) an amount appropriate for each employer to liquidate the employee's past service liability; the board shall have an actuarial and financial experience analysis of the system conducted at appropriate intervals, but no less frequently than once every six years; the actuarial valuations and the actuarial and financial experience analysis shall be prepared and certified by a member of the American Academy of Actuaries;

(6) to prescribe the policies for the proper operation of the system and carry on other activities that are considered necessary to carry out the intent and purpose of the system in accordance with this chapter;

(7) to prescribe the rate of interest that shall be credited to the employee accounts each year;

(8) to waive the requirements of AS 39.35.520 in accordance with AS 39.35.522;

(9) to exercise the duties set out in AS 39.30.155 with respect to the supplemental employee benefit program under AS 39.30.150 - 39.30.180;

(10) to exercise the duties set out in AS 39.45.025 with respect to the deferred compensation program for state employees;

(11) to adopt regulations for the election of trustees to the Alaska State Pension Investment Board and for removal from the investment board of trustees elected from the system;

(12) to adopt a contribution surcharge under AS 39.35.160(c).

History: (Sec. 32 ch 143 SLA 1960; am Sec. 1 ch 235 SLA 1968; am Sec. 1 ch 109 SLA 1970; am Sec. 2 ch 159 SLA 1972; am Sec. 1 - 4 ch 1 SLA 1974; am Sec. 16, 17 ch 128 SLA 1977; am Sec. 8 ch 174 SLA 1978; am Sec. 24 ch 146 SLA 1980; am Sec. 41 ch 137 SLA 1982; am Sec. 16 ch 31 SLA 1992; am Sec. 32 ch 68 SLA 2000)

Revisors Notes: In 1992, “to” was inserted before “adopt” in paragraph (11) of this section to correct a manifest error in enactment of that paragraph by Sec. 16, ch. 31, SLA 1992.

Amendment Notes: The 1992 amendment, effective July 1, 1993, added paragraph (11).

The 2000 amendment, effective August 20, 2000, added “the board may, by regulation, define a quorum for the conduct of its business, including appeals and disability appeals” at the end of paragraph (1) and added paragraph (12).

Decisions: Duty to make findings. In acting as an appeals board on decisions of the administrator, the board’s duty to make findings distinguishes it from appellate bodies and the appellate court “tie affirms” policy does not apply. *Stalnaker v. Williams*, 960 P.2d 590 (Alaska 1998).

Quoted in *Powers v. State, Pub. Employees’ Retirement Bd.*, 757 P.2d 65 (Alaska 1988).

SEC. 39.35.042. REGULATIONS.

(a) Regulations adopted by the board under this chapter relate to the internal management of state agencies and their adoption is not subject to AS 44.62 (Administrative Procedure Act).

(b) Notwithstanding (a) of this section, a regulation adopted under this chapter shall be published in the Alaska Administrative Register and Code for informational purposes. Each regulation adopted under this chapter shall conform to the style and format requirements of the drafting manual for administrative regulations that is published under AS 44.62.050.

(c) At least 30 days before the adoption, amendment, or repeal of a regulation under this chapter, the board shall provide notice of the action that is being considered. The notice shall be

(1) posted in public buildings throughout the state;

(2) published in one or more newspapers of general circulation in each judicial district of the state;

(3) mailed to each person or group that has filed a request for notice of proposed action with the board; and

(4) furnished to each member of the legislature and to the Legislative Affairs Agency.

(d) Failure to mail notice to a person as required under (c)(3) of this section does not invalidate an action taken by the board.

(e) The board may hold a public hearing on a proposed regulation.

(f) A regulation adopted under this chapter takes effect 30 days after adoption by the board.

(g) Notwithstanding the other provisions of this section, a regulation may be adopted, amended, or repealed, effective immediately, as an emergency regulation by the unanimous vote of a quorum of the board. For an emergency regulation to be effective the board must find that the adoption, amendment, or repeal of the regulation is necessary for the immediate preservation of the orderly operation of the system or the business of the board. The board shall, within 10 days after adoption of an emergency regulation, give notice of the adoption under (c) of this section. An emergency regulation adopted under this subsection may not remain in effect past the date of the next regular board meeting unless the board complies with the procedures set out in this section and adopts the regulation as a permanent regulation.

(h) In this section “regulation” has the meaning given in AS 44.62.640(a).

History: (Sec. 3 ch 13 SLA 1963; am Sec. 3 ch 35 SLA 1984)

Revisors Notes: In 1998, in subsection (h), “AS 44.62.640(a)” was substituted for “AS 44.62.640(a)(2)” to reflect the 1984 renumbering of AS 44.62.640(a)(2).

SEC. 39.35.047. HEARINGS.

(a) The board shall adopt regulations establishing procedures for the conduct of hearings and appeals under this chapter.

(b) In the conduct of a hearing under this chapter, the board may issue subpoenas, administer oaths, compel the attendance and testimony of witnesses,

compel the taking of depositions and the submission of affidavits, and compel the production of documents and records. The board's powers under this subsection do not extend to prehearing discovery. However, upon good cause shown, the board may permit the preservation of witness testimony if the board cannot successfully compel the witness to attend a hearing. The board may authorize hearing officers to conduct hearings under this chapter and issue decisions; the decision of a hearing officer may be appealed to the board. The board shall adopt procedures for appeals from a hearing officer's decision.

(c) A majority of a quorum of the board may issue a ruling or modification of a ruling. If the board's vote on an appeal under this chapter is a tie vote of those members present and voting, the decision being appealed is affirmed. The board, by regulation, shall establish procedures for the reconsideration of a ruling issued under this chapter. A request for reconsideration is timely if it is received within 30 days after the initial ruling was issued.

(d) An aggrieved party may appeal a final decision to the superior court.

History: (Sec. 33 ch 68 SLA 2000)

Revisors Notes: Enacted as AS 39.35.077. Renumbered in 2000.

Effective Date Notes: section 33, ch. 68, SLA 2000, which enacted this section, took effect on August 20, 2000.

SEC. 39.35.050. ADMINISTRATOR.

(a) The commissioner shall appoint an administrator in charge of the public employees' retirement system and the supplemental employee benefit program (AS 39.30.150 - 39.30.180).

(b) *[Repealed, Sec. 50 ch 13 SLA 1980]*. The Administrator shall serve as secretary of the board. He shall administer the business of the system and is responsible for its proper operation.

History: (Sec. 33 a ch 143 SLA 1960; am Sec. 5 ch 1 SLA 1974; am Sec. 26, 50 ch 13 SLA 1980; am Sec. 25 ch 146 SLA 1980)

Decisions: Quoted in *Holmberg v. State, Div. of Risk Mgt.*, 796 P.2d 823 (Alaska 1990).

SEC. 39.35.060. DUTIES OF THE ADMINISTRATOR.

The administrator shall

(1) with the assistance of a technical actuarial advisor, submit to the board the required actuarial tables and the statistical data necessary for periodic actuarial surveys of the operating experience of the system;

(2) maintain records of the employees included in the system that are necessary for the proper administration of the system and furnish information requested by the actuary for preparing valuations and periodic experience analyses;

(3) attend meetings of the board and serve as secretary of the board;

(4) certify to the appropriate division of the Department of Administration the payments made under this chapter;

(5) remit to the Department of Revenue, for deposit in the pension fund, assets received for the account of the system;

(6) formulate and recommend to the board regulations to govern the operation of the system;

(7) formulate and recommend to the board regulations to govern the operation of the supplemental employee benefit program under AS 39.30.150 - 39.30.180;

(8) publish an information handbook for the system at intervals as the administrator considers appropriate.

History: (Sec. 33 a ch 143 SLA 1960; am Sec. 6 ch 1 SLA 1974; am Sec. 27 ch 13 SLA 1980; am Sec. 26 ch 146 SLA 1980; am Sec. 23 ch 106 SLA 1988; am Sec. 29 ch 59 SLA 2002)

Amendment Notes: The 2002 amendment, effective June 20, 2002, added paragraph (8).

SEC. 39.35.070. DUTY OF EMPLOYERS TO FURNISH RECORDS.

Each employer shall furnish the administrator with records concerning the periods of service, dates of birth, compensation, new entrants into service, death, withdrawals, and other employee data necessary for the proper and effective operation of the system.

History: (Sec. 33 b ch 143 SLA 1960; am Sec. 7 ch 1 SLA 1974)

SEC. 39.35.080. DUTIES OF THE ALASKA STATE PENSION INVESTMENT BOARD.

The Alaska State Pension Investment Board is the fiduciary of the fund. The board has the same powers and duties established under this chapter in regard to the fund as are provided in AS 14.25.035(d) and 14.25.180.

History: (Sec. 34 ch 143 SLA 1960; am Sec. 59 ch 138 SLA 1986; am Sec. 30 ch 141 SLA 1988; am Sec. 17 ch 31 SLA 1992)

Amendment Notes: the 1992 amendment, effective July 1, 1993, substituted the present first sentence for the former sentence which read “The Commissioner of Revenue is the treasurer of the system and the fiduciary of the fund” and substituted “board” for “commissioner” in the second sentence.

SEC. 39.35.090. ATTORNEY GENERAL.

The attorney general of the state is the attorney for the system and shall represent it in a legal proceeding.

History: (Sec. 35 ch 143 SLA 1960)

SEC. 39.35.100. ACCOUNTING.

(a) The commissioner of administration shall establish and maintain an adequate system of accounts and records for the system. The accounts and records shall be integrated with the accounts, records, and procedures of the employers to the end that they operate most effectively and at minimum expense, and that duplication of records and accounts is avoided.

(b) All income of the pension fund and all disbursements made by the fund shall be credited or charged, whichever is appropriate, to the following accounts:

(1) An individual account shall be maintained for each employee to record the amount of the employee’s mandatory contributions collected under AS 39.35.160(a). As of the last day of each calendar year and each fiscal year beginning with June 30, 1969, this account shall be credited with interest, by applying one half of the prescribed rate of interest to the balance in the account as of that date. Within one year following retirement, the amount actuarially determined as necessary to fully fund the benefits to be received shall be transferred first from the employee contribution account and, after the employee contribution account has been exhausted, then from the employer contribution account into the retirement reserve account.

(2) An individual account shall be maintained for each employee to record the amount of the employee's voluntary contributions. As of the last day of each calendar year and each fiscal year beginning with June 30, 1969, this account shall be credited with interest, by applying one half of the prescribed rate of interest to the balance in the account as of that date. Amounts that, before termination of employment, are withdrawn by an employee from the employee's savings account shall be charged to that account. Upon retirement, the amount actuarially determined as necessary to fully fund the benefits to be received shall be transferred first from the employee savings account and, after the employee savings account has been exhausted, then from the employer contribution account into the retirement reserve account.

(3) A separate account for each employer shall be maintained. The account shall be credited with contributions of the employer. This account shall be charged with the employer's actuarial charge for pension, death benefits, and other benefits paid under this system to or on behalf of the employee of the employer. After an allowance for interest credited to employee contribution accounts and employee savings accounts, the investment income of the pension fund shall be allocated to the retirement reserve account and to each employer asset share account according to the ratio that the average of the assets in the account as of the beginning and as of the end of the fiscal year bears to the total of the average balance of the retirement reserve account and all employer accounts.

(4) An expense account shall be maintained for the system. This account shall be charged with all disbursements representing administrative expenses incurred by the system. At the end of the year the expense account shall be allocated to each employer in accordance with (3) of this subsection. Expenditures from this account shall be included in the governor's budget for each fiscal year and are subject to approval by the legislature.

History: (Sec. 36 ch 143 SLA 1960; am Sec. 1, 2 ch 35 SLA 1969; am Sec. 2, 3 ch 109 SLA 1970; am Sec. 8 - 10 ch 1 SLA 1974; am Sec. 18 ch 128 SLA 1977; am Sec. 42, 43 ch 137 SLA 1982)

SEC. 39.35.110. INVESTMENTS. [REPEALED, SEC. 33 CH 141 SLA 1988].

Repealed or Renumbered

(a) When, in the opinion of the commissioner of administration, there is on hand in the pension fund a surplus over and above a reasonably safe amount to take care of current demands upon the fund, the surplus, or so much of it as in the judgment of the commissioner of administration is considered proper,

may be invested at competitive national market rates by the commissioner of revenue in

(1) [Repealed, § 15 ch 122 SLA 1980.]

(2) [Repealed, § 15 ch 122 SLA 1980.]

(3) [Repealed, § 15 ch 122 SLA 1980.]

(4) [Repealed, § 15 ch 122 SLA 1980.]

(5) shares of federally chartered savings and loan associations in Alaska, to the extent that the investment is insured by the federal government or an agency of the federal government;

(6) deposits with mutual savings banks in Alaska, to the extent that the investment is insured by the federal government or an agency of the federal government;

(7) deposits with state and national banks in Alaska to the extent that the investment is insured by the federal government or an agency of the federal government;

(8) [Repealed, § 15 ch 122 SLA 1980.]

(9) the guaranteed portion of Small Business Administration loans;

(10) first lien real estate mortgages guaranteed by the federal Veterans Administration

(11) notes secured by mortgages of commercial or residential buildings if the mortgages are insured by a private mortgage insurance corporation that is authorized to do business in Alaska and has combined capital, surplus and reserves aggregating at least \$20,000,000; however,

(A) no mortgage insurance is necessary for commercial loans having loan-to-value ratios of less than 50 percent and the minimum coverage of other commercial loans shall be 10 percent for those having a loan-to-value ratio of 50-60 percent and 15 percent for those having a loan-to-value ratio greater than 60 percent but no more than 75 percent, and

(B) no mortgage insurance is necessary for residential loans having a loan-to-value ratio of less than 70 percent and the minimum coverage of other residential loans shall be 10 percent for those having a loan-to-value ratio greater than 70 percent but less than 90 percent and 20 percent for those having a loan-to-value ratio of 90 percent;

(12) conventional residential mortgages if the originating financial

institution retains at least 25 percent of the mortgage for a minimum of two years;

(13) notes secured by mortgages of commercial buildings if the originating financial institution retains at least 25 percent of the mortgage until maturity;

(14) FHA guaranteed portion of business and industrial loans made under the Rural Development Act of 1972;

(15) [Repealed, § 15 ch 122 SLA 1980.]

(16) [Repealed, § 15 ch 122 SLA 1980.]

(17) banker's acceptances that are eligible for discount at the Federal Reserve Bank and certificates of deposit issued by United States domestic banks which are members of the Federal Deposit Insurance Corporation if a generally recognized secondary market exists for the certificates of deposit;

(18) obligations of, or obligations insured by or guaranteed by, the United States or agencies or instrumentalities of the United States;

(19) obligations secured by reserves paid by the United States or agencies or instrumentalities of the United States or obligations of corporations in which the United States is a shareholder or member;

(20) corporate debt securities with a minimum rating of "A" or an equivalent rating by a nationally recognized rating organization;

(21) preferred and common stock of companies that have paid dividends in each of the three years immediately preceding the investment;

(22) commercial paper bearing the highest rating of a nationally recognized rating organization;

(23) securities of foreign governments, foreign governmental agencies, and foreign corporations the principal, interest or dividends on which are payable in either United States dollars or foreign currencies; however, investments under this paragraph may not exceed 10 percent of the total investments of the pension fund;

(24) foreign time deposits of both United States-owned and foreign-owned banks and trust companies denominated in either United States dollars or foreign currencies, however, investments under this paragraph may not exceed 20 percent of the total investments of the pension fund;

(25) gold bullion certified as to fineness of at least 99-1/2 percent;

however, investments under this paragraph may not exceed 10 percent of the total investments of the pension fund; the commissioner of revenue shall purchase gold bullion produced in Alaska to the extent that Alaska gold bullion is available if it can be obtained at a price comparable to out-of-state sources.

(b) [Repealed, § 15 ch 122 SLA 1980.]

(c) In making investments the commissioner of revenue shall exercise the judgement and care under the circumstances then prevailing which an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable income. However, no more than 50 percent of the pension fund may be invested at a given time in corporate stocks and debt securities, nor may more than five percent of the voting stock of one corporation be owned. Stocks eligible for purchase are restricted to stocks which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Federal Securities and Exchange Commission.

(d) Except as provided in this section, the commissioner of revenue may

(1) invest and reinvest the principal and income of the pension fund without distinction between principal and income;

(2) sell, exchange, convey, transfer, or otherwise dispose of an investment of the pension fund held in the name of the system by private contract or at public auction;

(3) vote upon a stock, bond, or other security; give a general or special proxy or power of attorney with or without power of substitution; exercise a conversion privilege, subscription right, or other option and make payments incidental to it; content to or participate in a corporation reorganization or other change affecting corporate securities, delegate discretionary power, pay an assessment or charge in connection with the delegation; and generally exercise any of the powers of an owner with respect to stocks, bonds, securities, or other investments held in the pension fund;

(4) make, execute, acknowledge, and deliver documents of transfer and conveyance and instruments necessary or appropriate to carry out the powers granted;

(5) register investments held in the pension fund in the name of the system;

(6) do all acts whether or not expressly authorized which are consid-

ered necessary or proper for the protection of the investments held in the pension fund.

(e) To qualify as a mortgage which may be purchased under (a)(11), (12), or (13) of this section;

(1) the originating financial institution must certify that the mortgage being sold has been made in compliance with law and that liens supporting the mortgage have been perfected;

(2) the mortgage may not have been held by the originating financial institution for a period greater than 90 days.

(f) When more than one-half of one per cent of the aggregate of all loans purchased from a financial institution becomes delinquent for 60 days, the pension fund shall discontinue purchasing loans from that financial institution until the delinquency is reduced to less than one-half of one per cent.

(g) [Repealed, § 15 ch 122 SLA 1980.]

(h) The commissioner of revenue may enter into futures contracts for the sale of investments purchased under (a) of this section only for the purposes of hedging an existing equivalent ownership position in the investments.

(i) The commissioner of revenue may transfer at any time a portion of the assets of the pension fund to a trust that is qualified under 26 U.S.C. sec. 401(a) (Internal Revenue Code) and exempt from taxation under 26 U.S.C. sec 501(a) (Internal Revenue Code) and that is maintained as a medium for pooling a portion of the funds of pension and profit-sharing trusts for diversifying investments in real estate and interests in real estate.

(26) The commissioner of revenue may enter into a contract or trust agreement necessary to effectuate the transfer of assets of the pension fund or to maintain the assets of the pension fund to be transferred to a trust under (I) of this section. (§ 37 ch 143 SLA 1960; am § 1 ch 129 SLA 1961; am § 1 ch 150 SLA 1962; am § 2 ch 4 SLA 1964; am §§ 1 — 3 ch 80 SLA 1964; am § 1 ch 111 SLA 1964; am § 1 ch 56 SLA 1967; am § 4 ch 73 SLA 1969; am §§ 3, 4 ch 17 SLA 1970; am § 2 ch 112 SLA 1972; am §§ 3, 4 ch 25 SLA 1974; am §§ 3, 4 ch 59 SLA 1977; and §§ 7 – 10, 15 ch 122 SLA 1980)

Cross references: For custody and investment of surplus funds of the state, see AS 37.10.070.

Effect of amendments: The 1972 amendment added paragraph (9) in subsection (a).

The 1974 amendment added paragraphs (10) – (15) in subsection (a) and added subsections (e) – (g).

The 1977 amendment, in subsection (a), inserted “private mortgage insurance” in paragraph (11), added the language beginning “however, (A) no mortgage insurance is necessary” to the end of that paragraph, and added paragraphs (16) and (17).

The 1980 amendment, in subsection (A), inserted “at competitive national market rates” near the end of the introductory paragraph, repealed former paragraphs (1) – (14), (8), and (15) and (16), substituted “the” for “such” preceding “investment” in paragraphs (5) and (6), substituted “of the federal government” for “thereof” at the end of paragraphs (5) and (6), substituted “buildings” for “real estate or other security” near the beginning of the introductory paragraph of paragraph (11), substituted “buildings” for “real estate” and added “until maturity” in paragraph (13), and “negotiable time” preceding “certificates of deposit” in paragraph (17), substituted “United States domestic” for “commercial” near the middle of paragraph (17), which begins: “which are members of” and ends: “certificates of deposit,” and added paragraphs (18) – (25). The amendment, in subsection P(c), substituted “an institutional investor” for “a man,” and “large investments entrusted to it” for “his own affairs” near the beginning of the subsection, deleted “his” following “permanent disposition of” and “the” preceding “probable safety of capital” near the middle of the subsection, inserted “safety of capital as well as probable” preceding “income” and deleted “from them as well as the probable safety of his capital” at the end of the first sentence, deleted “mutual funds and” preceding “corporate stocks” near the beginning of the second sentence, substituted “debt securities” for “bonds,” and “may” for “any” near the middle of the second sentence, substituted “and” for a comma following “bank stocks,” and deleted “and shares in mutual funds” following “insurance stocks” near the middle of the third sentence; rewrote subsection (3); adding subsection (h) – (j); and repealed subsections (b) and (g).

ARTICLE 02. MEMBERSHIP

SEC. 39.35.120. COMMENCEMENT OF PARTICIPATION.

(a) An employee of the state shall be included in this system upon commencement of employment with the state, or on January 1, 1961, whichever is later. Unless an employee has elected to participate in the optional university retirement program under AS 14.40.661 - 14.40.799, an employee of a political subdivision or public organization that becomes an employer shall be included in the system on the effective date of the employer’s participation or the date of the employee’s commencement of employment with the employer, whichever is later. Unless the village public safety officer waives coverage under AS 39.35.127, a village public safety officer employed under the village

public safety officer program established in AS 18.65.670 is included in this system on the effective date of this bill section or upon the officer's commencement of employment with the employer, whichever is later.

(b) Inclusion in the system is a condition of employment for an employee except as otherwise provided for

(1) an elected official;

(2) an employee making an election under AS 39.35.150(b);

(3) an employee of the university who has elected to participate in the optional university retirement program under AS 14.40.661 - 14.40.799; and

(4) a village public safety officer employed by a nonprofit regional corporation as set out in AS 39.35.127.

History: (Sec. 4 ch 143 SLA 1960; am Sec. 1 ch 155 SLA 1966; am Sec. 28 ch 13 SLA 1980; am Sec. 27 ch 146 SLA 1980; am Sec. 5 ch 104 SLA 1989; am Sec. 7 ch 57 SLA 2001; am Sec. 7 ch 97 SLA 2001)

Postponed Repeal Effective Date: Delayed repeal of paragraph (b)(2). - Under Sec. 12 and 15, ch. 57, SLA 2001, paragraph (b)(2) is repealed July 1, 2005.

Cross References: For the intent of the legislature concerning the amendments to this section made by ch. 97, SLA 2001, see Sec. 1, ch. 97, SLA 2001 in the 2001 Temporary and Special Acts.

Amendment Notes: The first 2001 amendment, effective July 1, 2001, in subsection (b) added the paragraph designations and paragraph (2) and made a stylistic change.

The second 2001 amendment, effective March 1, 2002, added the last sentence in subsection (a), and in subsection (b), added the paragraph designations and added paragraph (3).

Editors Notes: Section 13, ch. 97, SLA 2001 provides that the amendments to this section made by ch. 97, SLA 2001 do "not modify the terms of a contract between the state and a nonprofit regional corporation in existence on the effective date of this Act." The effective date of Sec. 7, ch. 97, SLA 2001, which amended this section, was March 1, 2002.

AG Opinions: Given subsection (b) of this section and AS 39.35.170, which make inclusion in the public employees retirement system (AS 39.35) a condition of employment for state employees and contributions to it mandatory,

the conclusion is that the legislature intended the statutory provisions of the public employees retirement system to apply to all state employees, and benefits under the public employees retirement system may not be negotiated under the Public Employment Relations Act (AS 23.40.070 - 23.40.260). January 23, 1978 Op. Att’y Gen.

Decisions: Cited in *Holmberg v. State*, Div. of Risk Mgt., 796 P.2d 823 (Alaska 1990).

SEC. 39.35.125. PARTICIPATION OF ELECTED OFFICIALS.

(a) An elected official of the state or of a political subdivision of the state if the political subdivision has elected under AS 39.35.550 - 39.35.650 to designate elected officials in the classifications of employees entitled to participate in the system is included in the system unless the official files a written waiver of coverage with the administrator. A waiver under this subsection waives coverage of future employment as an elected official, regardless of any change of employer. An elected official may file a waiver under this subsection at any time after election to office, including the period before taking the oath of office. An elected official may revoke a waiver under this subsection by filing a written revocation with the administrator. A revocation under this subsection operates prospectively only, and the elected official may not receive credited service for service as an elected official while the waiver was in effect. There is no limit on the number of times an elected official may file a waiver or revocation under this subsection.

(b) Service as an elected official before January 1, 1981, with an employer may be included retroactively as credited service with the system if the elected official or former elected official makes retroactive contributions equal to what the official would have made if the elected official or former elected official had been included in the system when the oath of office as an elected official was taken, plus accrued interest from July 1, 1984. The rate used to calculate the retroactive contributions may not be less than the rate in effect on January 1, 1961. An elected official or former elected official may not receive credited service under this subsection for any period in which the elected official or former elected official was receiving a retirement benefit from the system. An elected official or former elected official receiving a retirement benefit from the system on January 1, 1981, is not eligible to claim credited service under this subsection unless the elected official or former elected official is reemployed as an active member. Service as an elected official with an employer constitutes employment as an active member as long as a waiver of coverage under (a) of this section is not in effect.

(c) An elected official included in the system and that person’s employer are liable for contributions whenever that person is an elected official unless a waiver of coverage under (a) of this section is in effect.

History: (Sec. 2 ch 155 SLA 1966; am Sec. 3 ch 159 SLA 1972; am Sec. 1 ch 254 SLA 1976; am Sec. 19 ch 128 SLA 1977; am Sec. 8, 9 ch 82 SLA 1979; am Sec. 28 ch 146 SLA 1980; am Sec. 44 ch 137 SLA 1982; am Sec. 1 ch 170 SLA 1984; am Sec. 87 ch 21 SLA 2000; am Sec. 34 ch 68 SLA 2000)

Amendment Notes: The first 2000 amendment, effective April 28, 2000, made stylistic changes in the first sentence in subsection (b).

The second 2000 amendment, effective August 20, 2000, inserted “of the state or of a political subdivision of the state if the political subdivision has elected under AS 39.35.550 - 39.35.650 to designate elected officials in the classifications of employees entitled to participate in the system” in the first sentence in subsection (a).

Editors Notes: Section 46, ch. 146, SLA 1980 provides: “AS 39.35.125 (a), as reenacted in Sec. 28 of this Act, applies to an elected official holding office on or after January 1, 1981, even though he may have assumed office before that date.”

History Reports: For purpose of the amendment made by sec. 87, ch. 21, SLA 2000 (CSHB 435(JUD)), see 2000 House Journal Supp. No. 10 (July 19, 2000).

Decisions: Relationship between elected officials and state. - This section clearly contemplates an employer-employee relationship between elected officials and the state in the context of a retirement system. State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

Rights of elected officials in retirement systems. - There is no valid basis upon which to distinguish the rights of elected officials in the elected public officers retirement system from their rights in the public employees’ retirement system in the context of Alaska Const., art. XII, Sec. 7. State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

SEC. 39.35.127. PARTICIPATION OF VILLAGE PUBLIC SAFETY OFFICERS.

A village public safety officer employed by a nonprofit regional corporation is included in the system unless the officer files a written waiver of coverage with the administrator within 90 days after the effective date of this bill section or within 90 days after the date on which the officer begins employment as a village public safety officer, whichever is later. A waiver is retroactive to the effective date of this bill section or to the date on which the officer

began employment as a village public safety officer, whichever applies. The waiver must be in writing on a form provided by the administrator and must be filed with the administrator. A waiver under this subsection is irrevocable.

History: (Sec. 8 ch 97 SLA 2001)

Effective Date Notes: Under section 15, ch. 97, SLA 2001 this section became effective March 1, 2002.

Cross References: For the intent of the legislature in enacting this section, see Sec. 1, ch. 97, SLA 2001 in the 2001 Temporary and Special Acts.

Editors Notes: Section 13, ch. 97, SLA 2001 provides that this section does “not modify the terms of a contract between the state and a nonprofit regional corporation in existence on the effective date of this Act.” The effective date of Sec. 8, ch. 97, SLA 2001, which enacted this section, was March 1, 2002.

SEC. 39.35.130. TERMINATION OF PARTICIPATION. [REPEALED, SEC. 55 CH 128 SLA 1977].

Repealed or Renumbered

SEC. 39.35.131. MEMBERSHIP IN TEACHERS’ AND PUBLIC EMPLOYEES’ RETIREMENT SYSTEMS.

(a) A person who is employed at least half-time in the system during the same period that the person is employed at least half-time in a position in the teachers’ retirement system under AS 14.25 shall receive credited service under each system for half-time employment. However, the amount of credited service a person receives under the system during a school year may not exceed the amount necessary, when added to the amount of credited service earned during the school year under the teachers’ retirement system, to equal one year of credited service.

(b) A person who was employed at least half-time in a position in the teachers’ retirement system under AS 14.25 in the same period that the person was employed at least half-time in a position in this system may claim credited service in both systems for employment before May 31, 1989. To obtain this credited service, the person shall claim the service and verify the period of half-time employment. When eligibility for half-time service credit has been established, an indebtedness shall be determined to the retirement system in which the person did not participate. The amount of the indebtedness is the

full actuarial cost of providing benefits for the credited service claimed. Interest as prescribed by regulation accrues on that indebtedness beginning on the later of July 1, 1989, or the date on which the member is first eligible to claim the service. Any outstanding indebtedness existing at the time the person retires will require an actuarial adjustment to the benefits payable based on that service.

History - (Sec. 2 ch 58 SLA 1989)

SEC. 39.35.140. RE-EMPLOYMENT OF FORMER EMPLOYEES.
[REPEALED, SEC. 55 CH 128 SLA 1977].

Repealed or Renumbered

SEC. 39.35.150. RE-EMPLOYMENT OF RETIRED EMPLOYEES.

(a) If a retired employee subsequently becomes an active member, benefit payments may not be made during the period of re-employment unless the member makes an election under (b) of this section. During the period of re-employment, deductions from the employee's salary shall be made in accordance with AS 39.35.160. Upon subsequent retirement, the retired employee is entitled to receive an additional pension based on the credited service and the average monthly compensation earned during the period of re-employment in accordance with AS 39.35.370.

(b) A member who retired under AS 39.35.370(a) and subsequently becomes an active member may, within 30 days of the date of reemployment, elect to continue receiving benefit payments during the period of reemployment by filing an election with the administrator on a form provided by the administrator. An election under this subsection waives coverage for the period of reemployment and is irrevocable during the period of reemployment. During the period of reemployment, deductions from the member's salary may not be made under AS 39.35.160 and the member may not receive credited service. A member who participated in a retirement incentive program under ch. 26, SLA 1986; ch. 89, SLA 1989; ch. 65, SLA 1996; ch. 4, FSSLA 1996; or ch. 92, SLA 1997, is not eligible to make an election under this subsection.

(c) A member who has not made an election under (b) of this section is subject to AS 39.35.120 and 39.35.160.

(d) If the initial benefit payments to which the retired member is eligible have been reduced because the member retired early under AS 39.35.370(b) or increased because the member elected to receive a level income option benefit under former AS 39.35.460, the member shall also receive an incremental benefit based on the amount of the reduction imposed by AS

39.35.370(b) or the increase under former AS 39.35.460 on the first benefit and the length of time that the employee was reemployed and not receiving retirement benefits. The amount of the incremental benefit is equal to the difference between the normal retirement benefit to which the member would have been entitled had the member taken a normal retirement and the early retirement benefit or benefit under the level income option that the member has been receiving based on the member's initial period of employment multiplied by the total number of months that the member did not receive retirement benefits because of reemployment and that amount actuarially adjusted to be paid over the expected lifetime of the member. In the case of a member who selected benefits under the level income option, the total number of months may not include any month in which the member was 65 years of age or older.

History: (Sec. 7 ch 143 SLA 1960; am Sec. 4 ch 109 SLA 1970; am Sec. 4 ch 159 SLA 1972; am Sec. 11 ch 1 SLA 1974; am Sec. 20 ch 128 SLA 1977; am Sec. 35 ch 68 SLA 2000; am Sec. 8 ch 57 SLA 2001)

Delayed Amendment: Under Sec. 9, 12, and 15, ch. 57, SLA 2001, effective July 1, 2005, subsections (b) and (c) are repealed and subsection (a) is amended to read as follows: “(a) If a retired employee subsequently becomes an active member, benefit payments may not be made during the period of re-employment. During the period of re-employment, deductions from the employee's salary shall be made in accordance with AS 39.35.160. Upon subsequent retirement, the retired employee is entitled to receive an additional pension based on the credited service and the average monthly compensation earned during the period of re-employment in accordance with AS 39.35.370.”

Amendment Notes: The 2000 amendment, effective August 20, 2000, added the last three sentences.

The 2001 amendment, effective July 1, 2001, added the subsection designations and subsections (b) and (c); and, in subsection (a), added “unless the member makes an election under (b) of this section” at the end of the first sentence.

AG Opinions: A retired state employee was considered “re-employed” by the state on a “regular full-time basis” if he were elected to the state legislature. 1965 Op. Att’y Gen., No. 4, issued prior to the 1977 amendment. But see AS 39.35.125.

A former territorial employee, retired under the Public Employees Retirement Act of 1949, was entitled to receive both his salary as a legislator and his retirement benefits while he served in the state legislature. 1965 Op. Att’y Gen., No. 4, issued prior to the 1977 amendment.

SEC. 39.35.153. ARMY AND AIR NATIONAL GUARD EMPLOYEES.

A regular full-time civilian employee of the Alaska Army National Guard and Air National Guard, whose entire salary is paid from allotted federal funds, is included in this system, if the federal or state government pays the employer's contributions. If the amount that the federal government may legally contribute to the system is lower than the required employer's contribution, the state government shall contribute the difference. If the employer's contributions are not paid when due, service credit for the period of delinquency may not be granted until the contributions are paid.

History: (Sec. 1 ch 53 SLA 1965)

SEC. 39.35.154. NORTH PACIFIC FISHERY MANAGEMENT COUNCIL EMPLOYEES.

An employee of the North Pacific Fishery Management Council appointed under 16 U.S.C. 1852(f)(1) (Sec. 302(f)(1) of P. L. 94-265), whose compensation is paid from allotted federal funds, is included in the system if the council pays the employer's contributions. If the employer's contributions are not paid when due, credited service for the period of delinquency may not be granted until the contributions are paid.

History: (Sec. 1 ch 86 SLA 1977)

History Reports: For report on ch. 86, SLA 1977 (CSSB 135), see 1977 House Journal, p. 1206; 1977 Senate Journal, p. 535.

SEC. 39.35.155. AND 39.35.157. FORMER MAGISTRATES; TOKYO OFFICE EMPLOYEES. [REPEALED, SEC. 60 CH 21 SLA 1985].

Repealed or Renumbered

Revisor's note: This section is obsolete. It reads as follows: "A magistrate who terminated his employment before July 1, 1977 may be included retroactively in the system and receive service credit for time previously served as a magistrate if, before July 1, 1978, he makes retroactive contributions equal to what he would have made if he had been participating in the system."

Editor's note: The obsolete section derived from § 21, ch. 128, SLA 1977.

SEC. 39.35.158. ADMINISTRATIVE DIRECTOR OF COURTS.

An administrative director of the Alaska court system who withdraws from the judicial retirement system under AS 22.25.012 is eligible for membership in the system and shall receive credited service in the system for service rendered as administrative director. To be eligible for membership in the system under this subsection, the administrative director must contribute to the system

(1) the amount the director would have contributed if the director had been a member during the director's period of membership in the judicial retirement system; and

(2) any contributions for services as administrative director refunded by the system at the time the director became a member of the judicial retirement system.

History: (Sec. 30 ch 146 SLA 1980)

ARTICLE 03. CONTRIBUTIONS BY EMPLOYEES

SEC. 39.35.160. AMOUNT OF EMPLOYEE CONTRIBUTIONS.

(a) Beginning January 1, 1987, each peace officer or fire fighter shall contribute to the system an amount equal to seven and one-half percent of the peace officer's or fire fighter's compensation. Except as provided in (d) of this section, beginning January 1, 1987, each other employee shall contribute to the system an amount equal to six and three-quarters percent of the employee's compensation. The contributions shall be deducted by the employer at the end of each payroll period. The contributions shall be deducted from employee compensation before computation of applicable federal taxes, and the contributions shall be treated as employer contributions under 26 U.S.C. 414(h)(2). A member may not have the option of making the payroll deduction directly instead of having the contribution picked up by the employer.

(b) *[Repealed, Sec. 6 ch 135 SLA 1980 and Sec. 39 ch 146 SLA 1980].*

(c) An employee who has made an election under AS 39.35.300(c) or 39.35.310(c) to have the employee's years of service as a noncertificated employee of a state boarding school, of a school district or regional educational attendance area, of the special education service agency, or of the Alaska Vocational Technical Center determined by reference to AS 14.25.220 shall pay a contribution surcharge for that service. The amount of the surcharge is the

difference between the amount the employer would have had to contribute under AS 39.35.250 - 39.35.290 for the employee when treating the employee's credited service as service earned under AS 39.35.300(c) or 39.35.310(c) less the amount the employer would have had to contribute under AS 39.35.250 - 39.35.290 without treating the employee's credited service as service earned under AS 39.35.300(c) or 39.35.310(c).

(d) The employer of a member who is employed by a school district, a regional educational attendance area, or a state boarding school who is assaulted while on the job and who, as a result of a physical injury from the assault, is placed on unpaid leave of absence or is receiving benefits under AS 23.30, shall pay the member's contributions under this section while the member is, as a result of the on-the-job injury, on unpaid leave or receiving the benefits under AS 23.30.

History: (Sec. 8 a ch 143 SLA 1960; am Sec. 2 ch 235 SLA 1968; am Sec. 3 ch 35 SLA 1969; am Sec. 5 ch 109 SLA 1970; am Sec. 5 ch 159 SLA 1972; am Sec. 2 ch 58 SLA 1979; Sec. 6 ch 135 SLA 1980; am Sec. 39 ch 146 SLA 1980; am Sec. 15 ch 82 SLA 1986; am Sec. 1 ch 22 SLA 1999; am Sec. 4, 5 ch 52 SLA 2000; am Sec. 36 ch 68 SLA 2000; am Sec. 30 ch 59 SLA 2002)

Revisors Notes: In 1989, the term "fire fighter" was substituted for "fireman" in this section under Sec. 60, ch. 50, SLA 1989.

Subsection (d) was enacted as (c). Relettered in 2000, at which time a conforming amendment was made in subsection (a).

Cross References: For a provision relating to ch. 52, SLA 2000, which amended subsection (a) and enacted subsection (d), see sec. 7, ch. 52, SLA 2000 in the 2000 Temporary and Special Acts.

Amendment Notes: The 1999 amendment, effective July 1, 1999, added subsection (c).

The first 2000 amendment, effective August 9, 2000, added "Except as provided in (d) of this section" at the beginning of the second sentence in subsection (a) and added subsection (d).

The second 2000 amendment, effective August 20, 2000, deleted "irrevocable" preceding "election" near the beginning of the first sentence in subsection (c).

The 2002 amendment, effective June 20, 2002, added the last sentence in subsection (a).

Editors Notes: Section 2, ch. 123, SLA 1976, and Sec. 1, ch. 58, SLA 1979, contained amendments to subsection (a) of this section. Both Acts provided that the amendments take effect only if approved by a majority of the votes cast in special elections conducted by the Department of Administration among the active members of the Public Employees' Retirement System. The amendments were rejected.

Decisions: Cited in *Holmberg v. State, Div. of Risk Mgt.*, 796 P.2d 823 (Alaska 1990).

SEC. 39.35.165. PURCHASE OF CREDITED SERVICE.

(a) An employee who is eligible to purchase credited service under AS 39.35.310, 39.35.330, 39.35.340, 39.35.342, 39.35.345, 39.35.350, 39.35.360, or 39.35.370, a member who is eligible to purchase credited service under AS 39.35.375, or an elected public official who is eligible to purchase credited service under AS 39.35.381 is an employee for purposes of this section. An employee may, in lieu of making payments directly to the system, elect to have the employee's employer make payments as provided in this section.

(b) An employee may elect to have the employer make payments for all or any portion of the amounts payable for the employee's purchase of credited service through a salary reduction program as follows:

(1) the amounts paid under a salary reduction program are in lieu of contributions by the employee making the election; the electing employee's salary or other compensation shall be reduced by the amount paid by the employer under this subsection;

(2) the employee shall make an election under this section to purchase credited service as permitted in AS 39.35.310, 39.35.330, 39.35.340, 39.35.342, 39.35.345, 39.35.350, 39.35.360, 39.35.370, 39.35.375, or 39.35.381 and before the employee's termination of employment; the election must specify the number of payroll periods that deductions will be made from the employee's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods;

(3) an employee who makes an election under this section to have the employer make payments for less than all of the amounts payable for the employee's purchase of credited service may subsequently elect to have the employer make payments for all or any portion of the remaining amounts payable for the employee's purchase of credited service;

(4) [See editor's note]. amounts paid by an employer under this section shall be treated as employer contributions for the purpose of determining tax treatment under the Internal Revenue Code; the amounts paid by the employer under this section may not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

(c) Unless otherwise provided, employee contributions paid by the employer under this section are treated for all other purposes under the system in the same manner and to the same extent as employee contributions that are not paid by an employer under this section and AS 39.35.160. The system may assess interest or administrative charges attributable to any salary reduction election made under this section. The interest or administrative charges shall be added to the contribution that is made to the system by the employee each payroll period, and that is paid by the employer. The interest or administrative charges may not be treated as employee contributions for any purposes under this chapter, and an employee or an employee's beneficiary does not have a right to the return of the interest or administrative charges. Interest assessed under this section shall be at the rate specified by regulations adopted by the board.

(d) For system fiscal years beginning on or after July 1, 2001, the requirements of AS 39.35.370(i) may not be applied to reduce the amount of credited service that may be purchased under this section by an employee who first becomes an employee of the system before July 1, 2001, to an amount that is less than the amount of credited service allowed to be purchased with the application of any of the limits prescribed in 26 U.S.C. 415.

(e) Contributions to the system to purchase credited service do not qualify for treatment under this section if recognition of that service would cause an employee to receive a retirement benefit for the same service from the system and from one or more other retirement plans or systems of the state.

(f) To the extent that a payment under this section does not alter, amend, or revoke any one or more currently effective elections made by the employee, the board may accept employee contributions, which shall also be treated as employer contributions for the purpose of determining tax treatment under the Internal Revenue Code, for the payment for credited service purchases made under this section in whole or in part, by any one or a combination of the following methods:

(1) subject to the limitations prescribed in 26 U.S.C. 401(a)(3) and 26 U.S.C. 402(c), accepting eligible rollover distributions directly from one or

more retirement programs of another employer that are qualified under 26 U.S.C. 401(a) or accepting rollovers directly from an employee;

(2) subject to the limitations prescribed in 26 U.S.C. 408(d)(3)(A)(ii), accepting from an employee conduit rollover contributions that are received by the employee from one or more conduit rollover individual retirement accounts previously established by the employee;

(3) subject to the limitations prescribed in 26 U.S.C. 403(b)(13), accepting direct trustee-to-trustee transfers of all or a portion of the accounts of the employee, on and after January 1, 2002, from a tax sheltered annuity described in 26 U.S.C. 403(b);

(4) subject to the limitations prescribed in 26 U.S.C. 457(e)(17), accepting direct trustee-to-trustee transfers of all or a portion of the accounts of the employee, on and after January 1, 2002, from an eligible deferred compensation plan of a tax-exempt organization or a state or local government described in 26 U.S.C. 457(b);

(5) [See editor's note]. accepting direct trustee-to-trustee transfer from an account established for the benefit of the member in AS 39.30.150 - 39.30.180 (Alaska Supplemental Annuity Plan).

(g) Payments made under this section shall be applied to reduce the employee's outstanding indebtedness described in AS 39.35.310, 39.35.330, 39.35.340, 39.35.342, 39.35.345, 39.35.350, 39.35.360, 39.35.370, 39.35.375, or 39.35.381 at the time that the contributions are received by the system.

(h) If an employee retires before all payments are made under this section, the system shall calculate the employee's benefits based only on the payments actually made with respect to the credited service purchased.

(i) On satisfaction of the eligibility requirements of AS 39.35.310, 39.35.330, 39.35.340, 39.35.341, 39.35.345, 39.35.350, 39.35.360, 39.35.370, 39.35.375, or 39.35.381, the requirements of this section, and the administrative filing requirements specified by the board, the system shall adjust the employee's credited service history and add any additional service credits acquired.

(j) After an election is made under this section, the election is binding on and irrevocable for the employee and the employee's employer during the employee's remaining period of current employment, and the employee does not have the option of choosing to receive the contributed amounts directly in cash.

History: (Sec. 31 ch 59 SLA 2002)

Effective Date Notes: Section 50, ch. 59, SLA 2002 makes this section effective June 20, 2002, in accordance with AS 01.10.070(c).

Editors Notes: Under Sec. 48(a)(2) and (3), ch. 59, SLA 2002, paragraphs (b)(4) and (f)(5) apply “only after the Department of Administration receives favorable rulings . . . from the Internal Revenue Service that, under 26 U.S.C. 414(h)(2), the amounts paid by the employer will not be included in the member’s gross income for income tax purposes until those amounts are distributable by refund or retirement benefit payment.”

Section 49(d)(2), ch. 59, SLA 2002, provides that subsection (d) is retroactive to July 1, 2001. Section 49(e)(3), ch. 59, SLA 2002, provides that paragraphs (f)(3) and (4) are retroactive to January 1, 2002.

SEC. 39.35.170. EMPLOYMENT CONTRIBUTIONS MANDATORY.

Contributions of employees shall be made by payroll deductions. Every included employee shall be considered to consent to payroll deductions. It is of no consequence that a payroll deduction may cause the compensation paid in cash to an employee to be reduced below the minimum required by law. Payment of an employee’s compensation, less payroll deductions, is a full and complete discharge and satisfaction of all claims and demands by the employee relating to remuneration of services during the period covered by the payment, except with respect to the benefits provided under the system.

History: (Sec. 8 b ch 143 SLA 1960; am Sec. 3 ch 155 SLA 1966)

AG Opinions: Given AS 39.35.120(b) and this section, which make inclusion in the public employees retirement system (AS 39.35) a condition of employment for state employees and contributions to it mandatory, the conclusion is that the legislature intended the statutory provisions of the public employees retirement system to apply to all state employees, and benefits under the public employees retirement system may not be negotiated under the Public Employment Relations Act (AS 23.40.070 - 23.40.260). January 23, 1978 Op. Att’y Gen.

SEC. 39.35.180. VOLUNTARY CONTRIBUTIONS BY EMPLOYEE.

In addition to the mandatory contributions required of an employee under AS 39.35.170, an employee may, during each calendar year of participating in the system, voluntarily contribute to an employee savings account an amount not to exceed five percent of the employee’s compensation for that year.

History: (Sec. 8 c ch 143 SLA 1960)

***SEC. 39.35.190. DISPOSITION OF CONTRIBUTIONS. [REPEALED,
SEC. 55 CH 128 SLA 1977].***

Repealed or Renumbered

**SEC. 39.35.195. ROLLOVER DISTRIBUTIONS AND ROLLOVER
CONTRIBUTIONS.**

(a) A distributee may elect, at the time and in the manner prescribed by the administrator, to have all or part of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in the direct rollover.

(b) Except as provided by AS 39.35.165(f)(5), the system does not accept contributions of eligible rollover distributions.

(c) In this section,

(1) “direct rollover” means the payment of an eligible rollover distribution by the system to an eligible retirement plan specified by a distributee who is eligible to elect a direct rollover;

(2) “distributee” means a member or a beneficiary who is the surviving spouse of the member;

(3) “eligible retirement plan”

(A) means

(i) an individual retirement account described in 26 U.S.C. 408(a);

(ii) an individual retirement annuity defined in 26 U.S.C. 408(b);

(iii) an annuity plan described in 26 U.S.C. 403(a);

(iv) a qualified trust described in 26 U.S.C. 401(a);

(v) on and after January 1, 2002, an annuity plan described in 26 U.S.C. 403(b); or

(vi) on or after January 1, 2002, a governmental plan described in 26 U.S.C. 457(b); and

(B) notwithstanding (A) of this paragraph, means, with respect to distributions made before January 1, 2002, an individual retirement account or an individual retirement annuity account described or defined in 26 U.S.C. 408 in the case of an eligible rollover distribution to a beneficiary who is the surviving spouse of a member;

(4) “eligible rollover distribution” means a distribution of all or part of a total account to a distributee, except for

(A) a distribution that is one of a series of substantially equal installments payable not less frequently than annually over the life expectancy of the distributee or the joint and last survivor life expectancy of the distributee and the distributee’s designated beneficiary, as defined in 26 U.S.C. 401(a)(9);

(B) a distribution that is one of a series of substantially equal installments payable not less frequently than annually over a specified period of 10 years or more;

(C) a distribution that is required under 26 U.S.C. 401(a)(9);

(D) the portion of any distribution that is not includable in gross income;

(E) a distribution made on or after January 1, 2002, that is on account of hardship; and

(F) other distributions that are reasonably expected to total less than \$200 during a year.

History: (Sec. 32 ch 59 SLA 2002)

Effective Date Notes: Section 50, ch. 59, SLA 2002 makes this section effective June 20, 2002, in accordance with AS 01.10.070(c).

SEC. 39.35.200. REFUND UPON TERMINATION OF EMPLOYMENT FOR REASON OTHER THAN DEATH.

(a) Except as provided in (c) of this section, an inactive employee, not on leave-without-pay status or layoff status, is entitled to receive a refund of the balance of the employee contribution account.

(b) If, upon termination of employment, an employee has credited service of less than five years and has less than \$1,000 in the employee contribution account, a refund of the employee contribution account must be made unless

the employee indicates in writing that future retirement is intended and contributions should not be refunded. An employee who is reemployed with an employer and whose contributions have not been refunded before reemployment is not eligible for a refund.

(c) An employee who is terminated and is a vested employee, deferred vested employee, or who is entitled to benefits under AS 39.35.385, and who is married at the time of application for a refund or whose rights to a refund are subject to a qualified domestic relations order is entitled to receive a refund of the balance of the employee contribution account only if the employee's present spouse and each person entitled under the order consent to the refund in writing on a form provided by the administrator. The administrator may waive written consent from the person entitled to benefits under the order if the administrator determines that the person cannot be located or for other reasons established by regulation. The administration may waive written consent from the spouse if the administrator determines that

(1) the employee was not married to the spouse during any period of the employee's employment with an employer;

(2) the spouse has no rights under this chapter because of the terms of a qualified domestic relations order;

(3) the spouse cannot be located;

(4) the employee and spouse have been married for less than two years and the member establishes that they are not cohabiting; or

(5) other reasons established by regulation exist.

History: (Sec. 9 a ch 143 SLA 1960; am Sec. 12 ch 1 SLA 1974; am Sec. 1 ch 81 SLA 1976; am Sec. 22 ch 128 SLA 1977; am Sec. 45 ch 137 SLA 1982; am Sec. 32, 33 ch 117 SLA 1986)

SEC. 39.35.210., 39.35.220. REFUNDS. [REPEALED, SEC. 55 CH 128 SLA 1977].

Repealed or Renumbered

SEC. 39.35.230. REFUND UPON DEATH OF RETIRED EMPLOYEE.

Upon the death of a retired employee, the employee's beneficiary shall be paid

(1) the excess of the balance in the employee contribution account of the deceased employee as of the date of the beginning of the employee's pen-

sion payments over the sum of the pension payments previously received by the employee, but this amount may not be paid if a joint and survivor option under AS 39.35.450 is in effect or if a surviving spouse's pension under AS 39.35.440 is payable; and

(2) the remaining payments purchased by the balance in the employee savings account of the deceased employee as of the date the employee retired.

History: (Sec. 9 d ch 143 SLA 1960; am Sec. 107 ch 127 SLA 1974)

SEC. 39.35.240. WITHDRAWAL OF VOLUNTARY CONTRIBUTIONS.

An active employee may withdraw a savings account only if the employee receives the consent of the administrator. The administrator may permit a withdrawal before termination of employment only in cases of financial need.

History: (Sec. 9 e ch 143 SLA 1960; am Sec. 23 ch 128 SLA 1977)

ARTICLE 04. CONTRIBUTIONS BY EMPLOYERS

SEC. 39.35.250. CALCULATION OF EMPLOYER'S CONTRIBUTION RATE.

(a) An employer shall make contributions to the system in amounts determined in accordance with this section. For the purposes of this section, the past service date for each employer is the entry date of the employer or December 31, 1972, whichever is later. After December 31, 1972, if amendments to this chapter are enacted that substantially affect benefits accrued before the effective date of the amendment, the past service date will be changed to December 31 of the year immediately preceding that in which the amendment is enacted. The contribution rate is the sum of the consolidated employer rate and the past service rate.

(b) In (a) of this section, "consolidated employer rate" means the percentage of compensation of all active employees in the system which, if paid over the period of their credited service after their past service date and when combined with all employee contributions, is sufficient to provide the benefits earned after such past service dates. This percentage is uniformly determined for all employers and is applicable to each employer.

(c) In (a) of this section, "past service rate" means the percentage of compensation of all active employees in the system necessary to provide the annual amount required to amortize the unfunded obligations of the employer

for benefits earned before the employer's past service date over a period not to exceed 40 years. The period of amortization begins at the past service date of each employer. The percentage is separately determined for each employer.

History: (Sec. 10 a ch 143 SLA 1960; am Sec. 13 ch 1 SLA 1974; am Sec. 24 ch 128 SLA 1977)

Decisions: Cited in *Holmberg v. State, Div. of Risk Mgt.*, 796 P.2d 823 (Alaska 1990).

SEC. 39.35.260. ANNUAL CALCULATION.

The contribution rate for each employer shall be calculated every fiscal year, using the information available at the time the computation is made. The computation shall be completed in time to be considered in the state budget. Each employer shall provide in its budget for the payment of contributions according to its current contribution rate.

History: (Sec. 10 b ch 143 SLA 1960)

SEC. 39.35.270. AMOUNT OF EMPLOYER'S CONTRIBUTIONS.

The amount of each employer's contributions shall be determined by applying the employer's contribution rate to the total compensation paid to the active employees of the employer for each payroll period and by including any adjustments to contributions required by AS 39.35.520(a). This amount shall be remitted by the employer to the administrator in accordance with AS 39.35.610.

History: (Sec. 10 c ch 143 SLA 1960; am Sec. 14 ch 1 SLA 1974; am Sec. 25 ch 128 SLA 1977; am Sec. 33 ch 59 SLA 2002)

Amendment Notes: The 2002 amendment, effective June 20, 2002, added "and by including any adjustments to contributions required by AS 39.35.520(a)" at the end of the first sentence.

SEC. 39.35.280. DETERMINATION AND PAYMENT OF STATE CONTRIBUTIONS.

The total amount of contributions required under AS 39.35.250 - 39.35.290 to be made by the state into the system shall be ascertained by the Department of Administration as soon as practicable after the end of each calendar month and shall be paid from the general fund of the state, except as provided in this section. If an employee is paid wages by the state during the month from a

special or administrative fund provided by law, the payment to the system shall be made from that special or administrative fund. If the wages of an employee include both wages for state employment paid from the general fund of the state and wages for state employment paid from special or administrative funds, the amount to be paid into the system shall be prorated among the state funds in proportion to the wages paid to the individuals from each fund. However, payment may not be made from the special or administrative fund if the statute covering the special or administrative funds prohibits it.

History: (Sec. 10 d ch 143 SLA 1960)

SEC. 39.35.285. EMPLOYERS OF VILLAGE PUBLIC SAFETY OFFICERS.

For purposes of AS 39.35.250 - 39.35.290, all the nonprofit regional corporations employing village public safety officers shall be treated jointly as a single employer.

History: (Sec. 9 ch 97 SLA 2001)

Effective Date Notes: Under section 15, ch. 97, SLA 2001, this section became effective March 1, 2002.

Cross References: For the intent of the legislature in enacting this section, see Sec. 1, ch. 97, SLA 2001 in the 2001 Temporary and Special Acts.

Editors Notes: Section 13, ch. 97, SLA 2001 provides that this section does “not modify the terms of a contract between the state and a nonprofit regional corporation in existence on the effective date of this Act.” The effective date of Sec. 9, ch. 97, SLA 2001, which enacted this section, was March 1, 2002.

SEC. 39.35.290. REGULATIONS GOVERNING TRANSMITTAL OF EMPLOYER CONTRIBUTIONS.

The board shall adopt regulations to ensure the orderly and efficient transmittal of employer contributions.

History: (Sec. 10 e ch 143 SLA 1960)

ARTICLE 05. SERVICE

SEC. 39.35.300. EMPLOYMENT WITH THE STATE.

(a) An active employee is entitled to credited service for periods of employment with the state after January 1, 1961, regardless of the office, department, division, or agency of the state in which the person was employed. For purposes of this chapter, the University of Alaska is not an office, department, division, or agency of the state. Service credit may not be granted under this chapter for service that is creditable under the teachers' retirement system, AS 14.25.

(b) A permanent part-time employee of the state receives credited service on a pro rata basis to that which would have been earned as a permanent full-time employee.

(c) A noncertificated employee of the Alaska Vocational Technical Center or a state boarding school who first becomes a member of the system on or after July 1, 1999, may, within 90 days after the employee first joins the system, make an election under this subsection to have the years of service that the employee earns as a noncertificated employee determined using the table for service on or after July 1, 1969, that is set out in the definition of "year of service" in AS 14.25.220. A noncertificated employee of the Alaska Vocational Technical Center or a state boarding school who is an active member of the system on July 1, 1999, may, within 180 days after July 1, 1999, make the election. A member of the system who is an inactive member on July 1, 1999, and who is later employed as a noncertificated employee of the Alaska Vocational Technical Center or a state boarding school may, within 90 days after beginning the subsequent employment, make the election. An election under this subsection is irrevocable except as provided in (d) of this section and shall be made in writing on a form provided by the administrator. The election applies to the employee's service earned for the school year in which the election is accepted by the administrator and applies to all subsequent employment as a noncertificated employee of a state boarding school, a school district or regional educational attendance area, the special education service agency, or the Alaska Vocational Technical Center. An employee who makes an election under this subsection shall pay the contribution surcharge as set out in AS 39.35.160(c).

(d) A noncertificated employee who has made an election under (c) of this section and who thereafter changes employment status from working for less than a full year, whether part-time or full time, to working for a full year, whether part-time or full-time, may, between July 1 and September 30, revoke

the election and cease payment of the contribution surcharge. A revocation under this subsection is retroactive to July 1 of the school year, as defined in AS 14.25.220, in which the revocation is made.

(e) A noncertificated employee who has not made an election under (c) of this section who changes employment status from working for a full year, whether part-time or full-time, to working for less than a full year, whether part-time or full-time, may, between July 1 and September 30, make the election and begin paying the contribution surcharge. The election is retroactive to July 1 of the school year, as defined in AS 14.25.220, in which the election is made.

History: (Sec. 11 ch 143 SLA 1960; am Sec. 4 ch 155 SLA 1966; am Sec. 4 ch 27 SLA 1976; am Sec. 26 ch 128 SLA 1977; am Sec. 29 ch 13 SLA 1980; am Sec. 2 ch 22 SLA 1999; am Sec. 37, 38 ch 68 SLA 2000)

Amendment Notes: The 1999 amendment, effective July 1, 1999, added subsection (c).

The 2000 amendment, effective August 20, 2000, in subsection (c) deleted “irrevocable” preceding “election” in three places and inserted “is irrevocable except as provided in (d) of this section and” in the third sentence from the end; and added subsections (d) and (e).

Article Notes: Administrative Code. For service, see 2 AAC 35, art. 4.

SEC. 39.35.310. EMPLOYMENT WITH OTHER EMPLOYERS.

(a) An active employee is entitled to credited service for periods of employment with a political subdivision or a public organization beginning with the effective date of the employer’s participation in the system. The employee is also entitled to credited service for periods of employment as designated in the employer’s participation agreement.

(b) A permanent part-time employee of a political subdivision or a public organization receives credited service on a basis proportionate to that which would have been earned as a permanent full-time employee.

(c) A noncertificated employee of a school district, a regional educational attendance area, or the special education service agency who first becomes a member of the system on or after July 1, 1999, may, within 90 days after the employee first joins the system, make an election under this subsection to have the years of service that the employee earns as a noncertificated employee determined using the table for service on or after July 1, 1969, that is set out in the definition of “year of service” in AS 14.25.220. A noncertificated em-

ployee of a school district, a regional educational attendance area, or the special education service agency who is an active member of the system on July 1, 1999, may, within 180 days after July 1, 1999, make the election. A member of the system who is an inactive member on July 1, 1999, and who later is employed as a noncertificated employee of a school district, a regional educational attendance area, or the special education service agency may, within 90 days after beginning the subsequent employment, make the election. An election under this subsection is irrevocable except as provided in (d) of this section and shall be made in writing on a form provided by the administrator. The election applies to the employee's service earned for the school year in which the election is accepted by the administrator and applies to all subsequent employment as a noncertificated employee of a state boarding school, a school district or regional educational attendance area, the special education service agency, or the Alaska Vocational Technical Center. An employee who makes an election under this subsection shall pay the contribution surcharge as set out in AS 39.35.160(c).

(d) A noncertificated employee who has made an election under (c) of this section and who thereafter changes employment status from working for less than a full year, whether part-time or full-time, to working for a full year, whether part-time or full-time, may, between July 1 and September 30, revoke the election and cease payment of the contribution surcharge. A revocation under this subsection is retroactive to the beginning of the school year, as defined in AS 14.25.220, in which the revocation was made.

(e) A noncertificated employee who has not made an election under (c) of this section who changes employment status from working for a full year, whether part-time or full-time, to working for less than a full year may, between July 1 and September 30, make the election and begin paying the contribution surcharge. The election is retroactive to July 1 of the school year, as defined in AS 14.25.220, in which the election was made.

History: (Sec. 12 ch 143 SLA 1960; am Sec. 27 ch 128 SLA 1977; am Sec. 30 ch 13 SLA 1980; am Sec. 3 ch 22 SLA 1999; am Sec. 39, 40 ch 68 SLA 2000)

Amendment Notes: The 1999 amendment, effective July 1, 1999, added subsection (c).

The 2000 amendment, effective August 20, 2000, in subsection (c) deleted "irrevocable" preceding "election" in three places and inserted "is irrevocable except as provided in (d) of this section and" in the third sentence from the end; and added subsections (d) and (e).

**SEC. 39.35.320. TRANSFERS BETWEEN EMPLOYERS. [REPEALED,
SEC. 55 CH 128 SLA 1977].**

Repealed or Renumbered

SEC. 39.35.330. LEAVE OF ABSENCE.

(a) A leave of absence with pay authorized by an employer is not considered as interrupting employment. If the employee is a permanent part-time employee, credited service shall be granted on a basis proportionate to that which would have been earned as a permanent full-time employee.

(b) A leave or leaves of absence without pay exceeding 10 accumulated working days in any calendar year or layoff status authorized by an employer shall be considered as an interruption of employment and credited service may not be granted.

(c) Notwithstanding (b) of this section, an employee who takes more than 10 days leave of absence without pay in a calendar year because the employee is unable to work due to an on-the-job injury or occupational illness for which the employee is receiving benefits under AS 23.30 may elect to receive credited service for the time on leave of absence without pay status. When an employee elects to receive credited service under this subsection, an indebtedness is established. The amount of the indebtedness is equal to the contributions that the employee would have made if the employee had been working, less the sum of contributions that the employee made for those periods of time and an amount equal to contributions that would have been made for the first 10 days of leave without pay. Interest as prescribed by regulation accrues on the indebtedness beginning on the date that the employee returns to work or terminates employment. If there is an outstanding indebtedness at the time the employee is appointed to retirement, benefits shall be actuarially adjusted.

(d) An employee of a school district, a regional educational attendance area, or a state boarding school who is assaulted while on the job and who, as a result of a physical injury from the assault, is placed on leave without pay, whether or not the employee receives workers' compensation benefits under AS 23.30 for the injury, is entitled to accrue credited service while the employee, because of the injury, is on leave-without-pay status or is receiving the benefits under AS 23.30. Entitlement to credited service under this subsection ends when the employee is eligible to receive benefits under AS 39.35.370(a) or 39.35.410(a).

History: (Sec. 14 ch 143 SLA 1960; am Sec. 28 ch 128 SLA 1977; am Sec. 1 ch 64 SLA 1987; am Sec. 24 ch 106 SLA 1988; am Sec. 6 ch 52 SLA 2000)

Cross References: For a provision relating to ch. 52, SLA 2000, which enacted subsection (d), see sec. 7, ch. 52, SLA 2000 in the 2000 Temporary and Special Acts.

Amendment Notes: The 2000 amendment, effective August 9, 2000, added subsection (d).

SEC. 39.35.340. MILITARY SERVICE.

(a) A vested employee is entitled to credited service for active military service in the armed forces of the United States, either by enlistment or induction, if the employee received a discharge under honorable conditions and is not entitled to receive retirement benefits from the United States government for the same service. The credited service allowed may not exceed an aggregate period of five years. Benefits are not payable on credited service for military service unless the employee makes retroactive contributions to the system for the period of time that service credit is claimed. However, if the employee was in the employ of an employer on the date of entry into the armed forces and returned to the employ of an employer within 90 days after the date of discharge from military service, the employee is not required to make retroactive contributions under this system for the period of credited service.

(b) In order to obtain credited service under this section, an employee shall make an election to do so and shall verify the period of military service. When eligibility for credited service for military service has been established, an indebtedness shall be determined as follows: (1) the employee's actual compensation, or the calculated annual compensation for those employees working less than 12 months, during the calendar year 1976 or the year in which an employee first becomes vested under this chapter, whichever is later, multiplied by (2) the number of years of military service credited under this section, and this product multiplied by (3) six percent for members who are first eligible to claim this military service before January 1, 1987, or eight and one-half percent for members who are first eligible to claim this military service on or after January 1, 1987. Interest as prescribed by regulation accrues on this indebtedness beginning on July 1, 1977, or one year following the date a person first becomes vested, whichever is later. Any outstanding indebtedness that exists at the time a person is appointed to retirement necessitates an actuarial adjustment to the benefits payable based upon that military service.

(c) A retired employee on July 1, 1976, is eligible to receive increased benefits based upon military service as described in (a) of this section. To receive credited service for military service, a retired employee shall verify the military service. When verified, a retired employee is entitled to receive an increased benefit that shall be actuarially adjusted to reflect the employee's

indebtedness for that credit. The indebtedness shall be calculated in the same manner as described in (b) of this section except that it shall be based on the average monthly compensation used in calculating the benefit. The effective date of this increased benefit is the beginning of the month following that in which eligibility has been established.

(d) The credited service granted under this section may not be used to satisfy the credited service requirements for normal retirement.

(e) A deferred vested employee on July 1, 1976, is eligible to claim credited service under (a) of this section. In order to obtain credited service under this section, such an employee shall make an election to do so and shall verify the period of military service. When eligibility for military service has been established, an indebtedness shall be determined as follows: the employee's actual compensation, or the calculated annual compensation for those employees working less than 12 months, during the calendar year the employee terminated, shall be multiplied by six percent; this product shall then be multiplied by the number of years of military service credit under this section. Interest as prescribed by regulation accrues on this indebtedness commencing July 1, 1978. Any outstanding indebtedness that exists at the time a person is appointed to retirement necessitates an actuarial adjustment to the benefits payable based upon that military service.

(f) An employee cannot be credited with a period of active military service in the armed forces of the United States under this section if credit for that military service was granted under AS 14.25.

(g) A surviving spouse receiving or entitled to receive benefits under AS 39.35.420(b), 39.35.430, or 39.35.440 or benefits under a joint and survivor option filed under AS 39.35.450 is eligible to receive increased benefits based on military service as described in (a) of this section. To receive credited service for military service, the surviving spouse shall verify the employee's military service. When verified, the surviving spouse is entitled to receive an increased benefit which shall be actuarially adjusted to reflect the indebtedness for that credit. The indebtedness shall be calculated in the same manner as described in (b) of this section except that it shall be based on the average monthly compensation used in calculating the benefit. Benefits payable under this subsection are effective the first day of the month following that in which eligibility has been established.

(h) The combined period of military service claimed under this section and under AS 14.25 may not exceed five years.

(i) Credited service under (a) of this section includes service as a

(1) foreign service officer, a foreign service reserve officer, or a limited foreign service reserve officer with the United States Department of State in Vietnam, Cambodia, or Laos from August 4, 1964, through November 7, 1975; and

(2) member of the United States Merchant Marine Service from December 7, 1941, through September 30, 1945.

History: (Sec. 15 ch 143 SLA 1960; am Sec. 1 ch 123 SLA 1976; am Sec. 29 ch 128 SLA 1977; am Sec. 6 ch 174 SLA 1978; am Sec. 31 - 36 ch 13 SLA 1980; am Sec. 46 ch 137 SLA 1982; am Sec. 16 - 18 ch 82 SLA 1986)

Editors Notes: Section 55, ch. 82, SLA 1986, provides that notwithstanding (b) or (e) of this section, interest did not accrue on service claimed under (i) of this section “until July 1, 1987, or one year following the date on which a person first becomes vested, whichever is later.”

Section 56, ch. 82, SLA 1986, provides that “retired employees, deferred vested employees, and surviving spouses on July 1, 1986, are entitled to claim credited service or increased benefits for service claimed under (i) of this section in accordance with (c), (e) and (g) of this section.”

Section 57, ch. 82, SLA 1986 provides: “Sections 16, 22-23, 25-27, 42-45, and 50 of this Act apply only to members first hired under the Public Employees’ Retirement System after June 30, 1986.”

History Reports: For letter of intent for FCCS HB 198, which became ch. 123 SLA 1976 and amended this section, see 1976 Senate Journal 1359.

SEC. 39.35.342. VILLAGE PUBLIC SAFETY OFFICER SERVICE.

(a) Except for employment for which the employee waived coverage under AS 39.35.127, a vested employee is entitled to credited service for employment as a village public safety officer under the program established under AS 18.65.670 for which the employee has not otherwise received credited service under this system. An employee is not entitled to credited service for employment as a village public safety officer unless the employee was employed as a village public safety officer for at least one year. Benefits are not payable on credited service for village public safety officer service under this section unless the employee makes retroactive contributions to the system for the period of time that service credit is claimed.

(b) In order to obtain credited service under this section, an employee shall make an election to do so and shall verify the period of service as a village public safety officer. When eligibility for credited service for village

public safety officer service has been established, an indebtedness shall be determined. The amount of the indebtedness is equal to the full actuarial cost of providing benefits based on the service as a village public safety officer. Interest as prescribed by regulation accrues on this indebtedness beginning on the date the actuarial cost is established. Any outstanding indebtedness that exists at the time a person is appointed to retirement necessitates an actuarial adjustment to the benefits payable based upon service as a village public safety officer.

(c) The credited service granted under this section may not be used to satisfy the credited service requirements for normal retirement.

(d) An employee is not entitled to credited service under this section if the employee is entitled to receive retirement benefits from another employer for the same service under a retirement system that provides benefits based on defined benefits.

History: (Sec. 1 ch 92 SLA 1998; am Sec. 10 ch 97 SLA 2001)

Cross References: For the intent of the legislature related to the 2001 amendments to subsection (a) see Sec. 1, ch. 97, SLA 2001 in the 2001 Temporary and Special Acts.

Amendment Notes: The 2001 amendment, effective March 1, 2002, in subsection (a), added the exception at the beginning, added the language beginning “for which the employee” to the end of the first sentence, deleted the former next-to-last sentence, which read “The credited service allowed may not exceed an aggregate period of five years,” and inserted “under this section” in the last sentence.

Effective Date Notes: Section 1, ch. 92, SLA 1998, which enacted this section, took effect on September 10, 1998.

Editors Notes: Section 13, ch. 97, SLA 2001 provides that the amendments to subsection (a) by Sec. 10, ch. 97, SLA 2001 do “not modify the terms of a contract between the state and a nonprofit regional corporation in existence on the effective date of this Act.” The effective date of Sec. 10, ch. 97, SLA 2001, which enacted this section, was March 1, 2002.

SEC. 39.35.345. TEMPORARY SERVICE CREDIT.

(a) A vested employee is entitled to credited service for periods in which the employee regularly rendered full-time personal service to an employer but was not qualified to participate in the system because of the exclusion of tem-

porary workers as described in AS 39.35.680(21)(C)(iii). Benefits are not payable on this credited service unless the employee makes retroactive contributions to the system for the period of time that credited service is claimed. The retroactive contribution is the full actuarial cost of providing benefits for the credited service claimed.

(b) To obtain credited service under this section, an employee shall elect to do so and shall verify the period of temporary service. When eligibility for temporary service credit has been established, an indebtedness shall be determined as provided in (a) of this section. Any outstanding indebtedness existing at the time an employee retires requires an actuarial adjustment to the benefits payable based on the temporary service. Interest as prescribed by regulation accrues on the indebtedness beginning

(1) July 1, 1981, or one year following the date the employee first becomes vested, whichever is later, for an employee who claims temporary service credit no more than one year after the employee becomes vested;

(2) the date of vesting, for an employee who becomes vested after June 30, 1980, who is claiming temporary service credit more than one year after vesting for service performed before the employee vested;

(3) July 1, 1980, for an employee who became vested before July 1, 1980, who is claiming temporary service credit after June 30, 1981, for service performed before July 1, 1980;

(4) one year after completing the temporary service, for an employee who was vested on the last day of employment as a temporary employee and who claims the temporary service no more than one year after completing the service;

(5) on the date of completing the temporary service, for an employee who was vested on the last day of employment as a temporary employee and who claims temporary service more than one year after completing the service.

(c) A deferred vested employee on July 1, 1980, is eligible to claim credited service under (a) of this section. To obtain credited service under this section, a deferred vested employee shall elect to do so and shall verify the period of temporary service. When eligibility for temporary service credit has been established, an indebtedness shall be determined as provided in (a) of this section. Interest as prescribed by regulation accrues on that indebtedness beginning July 1, 1981. Any outstanding indebtedness existing at the time a deferred vested employee retires requires an actuarial adjustment to the benefits payable based on the temporary service.

(d) An employee may choose whether the credited service granted under this section is used to satisfy the credited service requirements for normal retirement under AS 39.35.370(a)(2) or (3) or 39.35.385(f) or is only used for the calculation of benefits. An election under this subsection is irrevocable and applies to all temporary credited service that the employee has accrued when the employee retires. An election under this subsection does not change the date that an employee is considered to have commenced participation in the system under AS 39.35.120.

(e) Notwithstanding the requirement in (a) of this section that an employee be vested to claim credited service under this section, for purposes of a conditional service retirement benefit under AS 39.35.385(f), an employee may claim credited service under this section for temporary legislative employment before July 1, 1979, for which the employee has not received credited service under AS 39.35.360(g).

History: (Sec. 29 ch 146 SLA 1980; am Sec. 25, 26 ch 106 SLA 1988; am Sec. 1, 2 ch 109 SLA 2000)

Revisors Notes: Enacted as AS 39.35.156. Renumbered in 1980.

Cross References: For authority of a member of the public employees' retirement system who has claimed credited service under this section before August 31, 2000, to make an election under (d) of this section as reenacted by sec. 1, ch. 109, SLA 2000, before the member's appointment to retirement, see sec. 4, ch. 109, SLA 2000 in the 2000 Temporary & Special Acts.

Amendment Notes: The 2000 amendment, effective August 31, 2000, re-wrote subsection (d) and added subsection (e).

SEC. 39.35.350. REINSTATEMENT OF CREDITED SERVICE.

(a) An employee who receives a refund of contributions in accordance with AS 39.35.200 forfeits corresponding credited service under this chapter.

(b) An employee may reinstate credited service associated with a refund by repaying the total amount of the refund. A former member who received a total refund of the former member's contribution account balance because of a levy under AS 09.38.065 or a federal tax levy may reinstate credited service in the same manner as an employee. Interest accrues from the date of the refund until repayment of the refund or retirement, whichever occurs first. Payments shall be applied first to accrued interest and then to principal.

(c) Any outstanding indebtedness that exists at the time an employee is appointed to retirement necessitates an actuarial adjustment to the benefits payable based on service reinstated under this section.

History: (Sec. 16 ch 143 SLA 1960; am Sec. 3 ch 235 SLA 1968; am Sec. 2 ch 81 SLA 1976; am Sec. 30 ch 128 SLA 1977; am Sec. 84 ch 59 SLA 1982; am Sec. 47 ch 137 SLA 1982; am Sec. 4 ch 89 SLA 1988)

SEC. 39.35.360. EARLIER SERVICE.

(a) An employee who completes three years of credited service with the state after January 1, 1961, for which the employee makes contributions required by this chapter is entitled to credited service for service rendered (1) before January 1, 1961, as an employee of the state and former Territory of Alaska; (2) before January 1, 1961, as an employee of the United States government in Alaska, excluding service in the armed forces of the United States; (3) after January 1, 1961, as a peace officer, correctional officer, or fire fighter of a participating political subdivision of the state if the employee is vested and is an active peace officer, correctional officer, or fire fighter in the system on or before January 1, 1983; or (4) after January 1, 1961, as a special officer commissioned by the state troopers if the employee has not otherwise received credit for the service and if the employee was employed on or before January 1, 1983, is vested, and has been an active special officer, peace officer, correctional officer, or fire fighter in the system. The retirement benefits payable to an employee under this section shall be reduced by the amount of the retirement pension benefits paid to the employee by the United States government for the same period of service.

(b) An employee who, under (a) of this section, is entitled to credited service for employment before January 1, 1961, is not required to make retroactive contributions under this chapter.

(c) *[Repealed, Sec. 41 ch 146 SLA 1980].*

(d) *[Repealed, Sec. 2 ch 26 SLA 1974].*

(e) An employee of a detention facility provided by a local government unit to the territorial or state government under AS 33.30.031 or former AS 33.30.060, who continues in state employment upon transfer of the facility to the state, is entitled to credited service for prior service with the facility if the employee remains in continuous employment with the state until July 1, 1976. To obtain credited service the employee is required to make retroactive contributions for the period of service between January 1, 1961, and the effective date of the transfer of the facility to the state.

(f) A surviving spouse receiving or entitled to receive a surviving spouse's pension under AS 39.35.440 or benefits under a joint and survivor option filed under AS 39.35.450 is eligible for increased benefits for any service credit authorized under (a) of this section, but not claimed or authorized by law before the employee's death.

(g) An employee is eligible to receive up to 10 years of credited service for service rendered before July 1, 1979, as a temporary employee of the legislature of the state or territory during legislative sessions. To receive retroactive credited service under this subsection, an employee shall claim the service before July 1, 2003, or before retiring, whichever occurs first. When the employee claims the service, an indebtedness of the employee to the system shall be established. For benefits that do not vary based on the amount of retroactive credited service, the indebtedness shall be established on the date the employee claims the credit, with interest accruing on the indebtedness beginning July 1, 2003. For benefits that vary based on the amount of retroactive credited service, the indebtedness shall be established on the date the employee retires, with interest accruing on the indebtedness beginning on the date of retirement. Any outstanding indebtedness that exists at the time the employee retires requires an actuarial adjustment to the benefits that are based upon retroactive credited service under this subsection.

(h) An employee of the state is eligible to receive credited service under AS 39.35.300(b) for service rendered as a permanent part-time employee before January 1, 1976. When the employee claims retroactive credited service, an indebtedness of the employee to the system shall be established. The amount of this indebtedness is equal to the contributions the employee would have made if the employee had been eligible for membership in the system. The rate used to calculate the contributions may not be less than the rate in effect on January 1, 1961. Interest as prescribed by regulation accrues on the indebtedness beginning July 1, 1981, for employees claiming the service before that date, and beginning July 1, 1980, for employees claiming the service on or after July 1, 1981. Any outstanding indebtedness that exists at the time the employee retires requires an actuarial adjustment to the benefits that are based on retroactive credited service under this subsection.

(i) An employee who completes three years of credited service with an employer, for which the employee makes contributions required by this chapter, is entitled to credited service on a year-for-year basis for service credited in the Civil Service Retirement System, rendered as an employee of an Alaska Bureau of Indian Affairs (BIA) school, other than service as a teacher. When eligibility for retroactive credited service under this subsection has been established, an indebtedness of the employee to the system shall be determined as follows: (1) the employee's actual annual compensation, or the calculated annual compensation for an employee who works fewer than 12 months, for

the most recent calendar year in which service is rendered to an employer before the calendar year in which the employee first becomes eligible to claim service under this subsection, multiplied by (2) the number of years of service in Alaska BIA schools that is credited under this subsection, and this product multiplied by (3) six percent for employees first eligible to claim this service before January 1, 1987, or eight and one-half percent for employees first eligible to claim this service on or after January 1, 1987. Interest as prescribed by regulation accrues on the indebtedness beginning on the date the employee may first claim the retroactive credited service. Any outstanding indebtedness that exists at the time the employee retires requires an actuarial adjustment to the benefits that are based on retroactive credited service under this subsection. A retirement benefit payable under this subsection for Alaska BIA service shall be reduced by an amount equal to the retirement benefits paid to the member by the United States government for the same service.

(j) An employee who has not completed three years of credited service with an employer may claim credited service as an employee of an Alaska Bureau of Indian Affairs (BIA) school, other than service as a teacher under (i) of this section if, on the date of transfer of the Alaska BIA school to the state, the employee is employed at the school and needs fewer than three additional years of continuous full-time employment for normal retirement in the federal Civil Service Retirement System, and the employee completes a period of service with an employer, for which the employer makes contributions required by this chapter, equal to the additional period of service that would have been required for that employee's normal retirement under the federal Civil Service Retirement System. An employee who claims credited service under this subsection shall provide federal government verification of the employee's federal Civil Service Retirement System status when the claim is filed.

(k) A vested member is eligible to receive credited service for employment after January 1, 1961, as a peace officer or fire fighter in a municipality that is an employer under this system but that was not an employer at the time of the employment. A vested member who claims retroactive credited service on or after July 1, 1988, is indebted to the system. The amount of the indebtedness is the full actuarial cost of providing benefits for the credited service claimed. Interest as established by regulation accrues on the indebtedness under this subsection beginning the first of the month following establishment of the indebtedness. Any outstanding indebtedness that exists at the time the officer or fire fighter retires requires an actuarial adjustment to the benefits that are based on retroactive credited service under this subsection.

(l) An administrative director of the Alaska Court System who withdraws from the judicial retirement system under AS 22.25.012(b) is eligible for membership in the public employees' retirement system and shall receive credited service in this system for service rendered as administrative director. To be

eligible for membership in this system under this subsection, the administrative director must contribute to the system

(1) the amount that would have been contributed if the administrative director had been a member during the period of the membership in the judicial retirement system; and

(2) any contributions for service as administrative director refunded from the public employees' retirement system at the time the administrative director became a member of the judicial retirement system.

History: (Sec. 17 ch 143 SLA 1960; am Sec. 4 ch 80 SLA 1964; am Sec. 5, 6 ch 155 SLA 1966; am Sec. 4 ch 235 SLA 1968; am Sec. 1 ch 55 SLA 1973; am Sec. 1, 2 ch 26 SLA 1974; am Sec. 1, 2 ch 245 SLA 1976; am Sec. 31 - 33 ch 128 SLA 1977; am Sec. 1, 7 ch 174 SLA 1978; am Sec. 3 ch 81 SLA 1979; am Sec. 10 ch 82 SLA 1979; am Sec. 31, 32, 41 ch 146 SLA 1980; am Sec. 48, 49 ch 137 SLA 1982; am Sec. 2 ch 170 SLA 1984; am Sec. 19 - 21 ch 82 SLA 1986; am Sec. 10 ch 88 SLA 1986; am Sec. 27, 28 ch 106 SLA 1988; am Sec. 1 ch 24 SLA 1992; am Sec. 34, 35 ch 59 SLA 2002)

Revisors Notes: In 1989, the term “fire fighter” was substituted for “fire-man” in this section under Sec. 60, ch. 50, SLA 1989.

Amendment Notes: The 1992 amendment, effective August 13, 1992, in subsection (i), deleted the former second sentence, which read “Retroactive credited service under this section must be claimed before the employee retires,” substituted the present last sentence for the former last sentence relating to employees with enough service credit in the civil service retirement system to be eligible for a retirement benefit under that system, and made stylistic changes.

The 2002 amendment, effective June 20, 2002, in subsection (g) rewrote the second and fourth sentences and added the fifth sentence; and added subsection (l).

ARTICLE 06. BENEFITS

SEC. 39.35.370. RETIREMENT BENEFITS.

(a) Subject to AS 39.35.450, a terminated employee is eligible for a normal retirement benefit

(1) at age 60 with at least five years credited service;

(2) with at least 20 years of credited service as a peace officer or fire fighter; or

(3) with at least 30 years of credited service for all other employees.

(b) Subject to AS 39.35.450, a terminated employee is eligible for an early retirement benefit at age 55 with at least five years credited service. An actuarial adjustment shall be made to retirement benefits paid under this section for an early retirement benefit. The monthly amount of a retirement benefit that would be due under (c) of this section shall be reduced by multiplying one-half of one percent times the number of months, to the nearest month, by which the retirement date of the employee falls short of the date that the employee reaches age 60.

(c) The monthly amount of a retirement benefit for a peace officer or fire fighter is two percent of the average monthly compensation times the years of credited service through 10 years, plus two and one-half percent of the average monthly compensation times the years of service over 10 years. For all other employees it is

(1) two percent of the average monthly compensation times all years of service before July 1, 1986, and for years of service through a total of 10 years; plus

(2) two and one-quarter percent of the average monthly compensation times all years of service after June 30, 1986, over 10 years of total service through 20 years; plus

(3) two and one-half percent of the average monthly compensation times all years of service after June 30, 1986, over 20 years of total service.

(d) The monthly amount of a retirement benefit for a deferred vested member shall be determined in accordance with (c) of this section as it was in effect on the date of the employee's termination of employment.

(e) Benefits payable under this section accrue from the first day of the month after which all of the following requirements are met: (1) the member meets the eligibility requirements of this section; (2) the member terminates employment; and (3) the member applies for retirement. The benefits are payable the last day of the month. If payment is delayed, a retroactive payment shall be made to cover the period of deferment. The last payment shall be made for the month in which a benefit is payable under this section.

(f) A member who is vested in the system as a peace officer or fire fighter at the time the member incurs a permanent disability of at least 33 1/3 per cent under workers' compensation and who (1) undergoes retraining because of the

disability; and (2) is subsequently employed with the state or other employer in a position other than peace officer or fire fighter, is eligible for a normal retirement benefit as a peace officer or fire fighter under (a) and (c) of this section upon completing 20 years of credited service.

(g) When an employee who was employed as a dispatcher in a state trooper office or in a police or fire department in the public employees' retirement system applies for appointment to retirement, the employee may convert the credited service for that position to credited service as a peace officer by claiming the service as peace officer service. An employee who has converted credited service to peace officer service under this subsection shall be treated as a peace officer for purposes of this chapter. When the member claims this credited service as peace officer service, an indebtedness of the member to the system shall be established. The indebtedness is equal to the full actuarial cost of the conversion of the credited service to treatment as peace officer service. Any outstanding indebtedness that exists at the time the member is appointed to retirement will require an actuarial adjustment to the benefits payable based upon the conversion of the credited service.

(h) When an employee applies for appointment to retirement in the system, the employee may convert the credited service to which this subsection applies to credited service as a peace officer by claiming the service as peace officer service. This subsection applies to credited service as an employee of a state correctional facility, other than as a correctional officer or correctional superintendent. This subsection also applies to credited service as an employee of the Department of Corrections in a management position in the division that has responsibility for institutions or the division that has responsibility for community corrections if the employee also has at least five years of credited service as a probation officer, correctional officer, assistant correctional superintendent, or correctional superintendent at a state correctional facility. An employee who has converted credited service to peace officer service under this subsection shall be treated as a peace officer for purposes of this chapter. When the member claims this credited service as peace officer service, an indebtedness of the member to the system shall be established. The indebtedness is equal to the full actuarial cost of the conversion of the credited service to treatment as peace officer service. Any outstanding indebtedness that exists at the time the member is appointed to retirement will require an actuarial adjustment to the benefits payable based upon the conversion of the credited service. In this subsection,

(1) "correctional facility" has the meaning given in AS 33.30.901; and

(2) "management position" includes positions as division director, deputy director, and assistant director.

(i) Notwithstanding any other provision of this chapter, the projected annual benefit provided by this chapter and the benefit from all other defined benefit plans required to be aggregated with the benefits from this system under the provisions of 26 U.S.C. 415 may not increase to an amount in excess of the amount permitted under 26 U.S.C. 415 at any time. In the event that any projected annual benefit of a member exceeds the limitation of 26 U.S.C. 415(g) for a limitation year, the system shall take any necessary remedial action to correct an excess accrued benefit. The provisions of 26 U.S.C. 415, and the regulations adopted under that statute, as applied to qualified defined benefit plans of governmental employers are incorporated as part of the terms and conditions of the system. This subsection applies to any member of this system.

(j) Notwithstanding (c) of this section,

(1) for the system fiscal years beginning on or after January 1, 1996, the annual compensation of a member who joined the system after the first day of the first system fiscal year beginning after December 31, 1995, that is used to calculate the member's average monthly compensation may not exceed \$150,000, as adjusted for the cost of living in accordance with 26 U.S.C. 401(a)(17)(B);

(2) for the system fiscal years beginning on or after January 1, 2002, the annual compensation limitation for such a member, which is so taken into account for such a member which is so taken into account for such purposes, may not exceed \$200,000, as adjusted for the cost of living in accordance with 26 U.S.C. 401(a)(17)(B);

(3) the cost-of-living adjustment in effect for a calendar year applies in this subsection to a determination period beginning in the calendar year.

(k) Notwithstanding the definition of "compensation" in AS 39.35.680, in (j) of this section, for system fiscal years beginning on or after January 1, 1998, and for purposes of 26 U.S.C. 415(b)(3) and the regulations adopted under that statute,

(1) "annual compensation"

(A) includes any amount that is contributed by the employer under a salary reduction agreement and that is not includable in the member's gross income under 26 U.S.C. 125, 132(f)(4), 402(e)(3), 402(h), or 403(b); and

(B) is limited to compensation that is actually paid to a member during the determination period;

(2) "determination period" means the system fiscal year.

History: (Sec. 18 ch 143 SLA 1960; am Sec. 2 ch 102 SLA 1963; am Sec. 7 ch 155 SLA 1966; am Sec. 5 ch 235 SLA 1968; am Sec. 6 ch 109 SLA 1970; am Sec. 6, 7 ch 159 SLA 1972; am Sec. 15 ch 47 SLA 1974; am Sec. 34 ch 128 SLA 1977; am Sec. 33 ch 146 SLA 1980; am Sec. 22 - 24 ch 82 SLA 1986; am Sec. 34, 35 ch 117 SLA 1986; am Sec. 14 ch 4 FSSLA 1996; am Sec. 1 ch 110 SLA 2000; am Sec. 1 ch 121 SLA 2000; am Sec. 36 ch 59 SLA 2002)

Revisors Notes: In 1989, the term “fire fighter” was substituted for “fire-man” in this section under Sec. 60, ch. 50, SLA 1989.

Subsection (h) was enacted as (g); relettered in 2000.

Cross References: For 1980 adjustment to pensions of retirees who were disabled at the time of retirement, see Sec. 49, ch. 146, SLA 1980 in the Temporary and Special Acts and Resolves; for 1986 increase in retirement benefits for certain employees of the Territory of Alaska, see Sec. 54, ch. 82, SLA 1986 in the Temporary and Special Acts and Resolves.

Amendment Notes: The 1996 amendment, effective July 1, 1996, added the last sentence in subsection (b).

The first 2000 amendment, effective June 3, 2000, added subsection (g).

The second 2000 amendment, effective September 4, 2000, added subsection (h).

The 2002 amendment, effective June 20, 2002, added subsections (i)-(k).

Editors Notes: In general, a person’s right to benefits under the state’s public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the public employees’ retirement system. The user is advised to ascertain which version of the statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

Section 57, ch. 82, SLA 1986 provides: “Sections 16, 22-23, 25-27, 42-45, and 50 of this Act apply only to members first hired under the Public Employees’ Retirement System after June 30, 1986.”

Section 44, ch. 4, FSSLA 1996 provides that nothing in that Act, which amended subsection (b), “modifies or terminates the terms of a collective bargaining agreement in effect on July 1, 1996.” Under Sec. 45, ch. 4, FSSLA 1996, the provisions of that Act, which amended subsection (b), are not severable, notwithstanding AS 01.10.030.

Section 49(b)(2), ch. 59, SLA 2002, provides that paragraph (j)(1) is retroactive to January 1, 1996. Section 49(e)(4), ch. 59, SLA 2002, provides that paragraph (j)(2) is retroactive to January 1, 2002. Section 49(c)(3), ch. 59, SLA 2002, provides that subsection (k) is retroactive to January 1, 1998.

Decisions: Employment credits' restricted use. - The phrase "credit for employment" as used in Sec. 7, ch. 89, SLA 1989, cannot be combined with age to determine a member's eligibility for retirement benefits; rather, Sec. 7 employment credits can only be applied according to their intended use: to determine years of service requirements in the overall determination of a member's eligibility for retirement. *Johnson v. Public Employees Retirement Bd.*, 848 P.2d 263 (Alaska 1993).

Cited in *Sheffield v. Alaska Pub. Employees' Ass'n*, 732 P.2d 1083 (Alaska 1987).

Collateral Refs: 67 C.J.S. Officers, Sec. 243 et seq.

Rights and liabilities as between employer and employee with respect to general pension or retirement plan. 42 ALR2d 461; 46 ALR3d 464.

Mandatory retirement of public officer or employee based on age. 81 ALR3d 811.

What constitutes "salary," "wages," "pay," or the like, within pension law basing benefits thereon. 91 ALR5th 225.

Article Notes: Notes To Decisions

Administrative Code. For benefits, see 2 AAC 35, art. 3.

Vested benefits: Benefits under Public Employees' Retirement System are in the nature of deferred compensation and the right to such benefits vests immediately upon an employee's enrollment in that system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

The vested benefits protected by Alaska Const., art. XII, Sec. 7, necessarily include not only the dollar amount of the benefits payable, but the requirements for eligibility as well. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

The fact that rights in Public Employees' Retirement System vest on employment does not preclude modifications of the system; that fact does, however, require that any changes in the system that operate to a given employee's disadvantage must be offset by comparable new advantages to that employee. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

SEC. 39.35.371. DISTRIBUTION REQUIREMENTS.

(a) The entire interest of a member must be distributed or must begin to be distributed not later than the member's required beginning date.

(b) If a member dies after the distribution of the member's interest has begun but before the distribution has been completed, the remaining portion of the interest shall continue to be distributed at least as rapidly as under the method of distribution being used before the member's death.

(c) If a member has made a distribution election and dies before the distribution of the member's interest begins, distribution of the member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the member's death. However, if any portion of the member's interest is payable to a designated beneficiary, distributions may be made over the life of the designated beneficiary or over a period not greater than the life expectancy of the designated beneficiary, commencing on or before December 31 of the calendar year immediately following the calendar year in which the member died, and if the designated beneficiary is the member's surviving spouse, the date distributions are required to begin may not be earlier than the later of December 31 of the calendar year (1) immediately following the calendar year in which the member died, or (2) in which the member would have attained 70 1/2 years of age, whichever is earlier. If the surviving spouse dies after the member but before payments to the spouse have begun, the provisions of this subsection apply as if the surviving spouse were the member. An amount paid to a child of the member will be treated as if it were paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.

(d) If a member has not made a distribution election before the member's death, the member's designated beneficiary must elect the method of distribution not later than December 31 of the calendar year (1) in which distributions would be required to begin under this section, or (2) that contains the fifth anniversary of the date of death of the member, whichever is earlier. If the member does not have a designated beneficiary or if the designated beneficiary does not elect a method of distribution, distribution of the member's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(e) For purposes of (c) of this section, distribution of a member's interest is considered to begin (1) on the member's required beginning date, or (2) if the designated beneficiary is the member's surviving spouse and the surviving spouse dies after the member but before payments to the spouse have begun, on the date distribution is required to begin to the surviving spouse. If distribution in the form of an annuity irrevocably commences to the member before

the required beginning date, the date distribution is considered to begin is the date that the distribution actually commences.

(f) Notwithstanding any contrary provisions of this chapter, the requirements of this section apply to all distributions of a member's interest and take precedence over any inconsistent provisions of this chapter.

(g) All distributions required under this section are determined and made in accordance with 26 U.S.C. 401(a)(9) and regulations adopted under that statute, including any minimum distribution incidental benefit requirement.

(h) Unless otherwise specified, the provisions of this section apply to calendar years beginning on or after January 1, 1989.

(i) In this section,

(1) "designated beneficiary" means the individual who is designated as the beneficiary under the system in accordance with 26 U.S.C. 401(a)(9) and regulations adopted under that statute;

(2) "required beginning date" means the first day of April of the calendar year following the calendar year in which the member either attains 70 1/2 years of age or actually retires, whichever is later.

History: (Sec. 37 ch 59 SLA 2002)

Effective Date Notes: Section 50, ch. 59, SLA 2002 makes this section effective June 20, 2002, in accordance with AS 01.10.070(c).

Editors Notes: Section 49(a)(3), ch. 59, SLA 2002, provides that this section is retroactive to January 1, 1989.

SEC. 39.35.375. PUBLIC SERVICE BENEFIT.

(a) An active or inactive member who has never been vested in this system or in the teachers' retirement system under AS 14.25, who has at least two years of credited service in this system, and who has membership service in the teachers' retirement system may claim credited service in this system in an amount equal to the membership service the member has in the teachers' retirement system. The claimed credited service may be added to service earned under this chapter to enable the member to qualify for a public service benefit under this section. The member may not claim credited service for membership service for which the member has received a refund under AS 14.25.150 unless the member fully pays the indebtedness as established under AS 14.25.063. The member may not claim credited service in this system based on unused sick leave under AS 14.25.115.

(b) To claim credited service under this section, the member shall file a written request with the administrator when the member applies to retire. The administrator shall determine the full actuarial cost of benefits based on the member's total credited service and shall transfer from the teachers' retirement system to this system an amount equal to the sum of the member contributions and any indebtedness payments to the teachers' retirement system and the employer contributions to the teachers' retirement system made on behalf of the employee together with interest earned on those contributions and indebtedness payments. If the amount to be transferred, when combined with the amount of employee contributions and indebtedness payments to this system and the amount of employer contributions on behalf of the employee in this system, and interest earned on contributions and indebtedness payments for the employee, is less than the full actuarial cost computed under this subsection, an indebtedness to the system equal to the amount of the difference is established. Interest as prescribed by regulation accrues on the indebtedness. The member must pay any outstanding indebtedness existing at the time the member applies for retirement in full before the member is appointed to retirement under this section.

(c) A member is entitled to receive a public service benefit under this section if the member has at least a total of five years credited service under this chapter and credited service from the teachers' retirement system claimed under this section. A public service benefit shall be calculated using the higher of the average monthly compensation for service in this system or the average base salary for service in the teachers' retirement system. The amount of the benefit shall be calculated in accordance with AS 39.35.370(c).

(d) Credited service earned under either this system or the teachers' retirement system that has been claimed for a public service benefit under this section may not be used for any other purpose. A member who claims credited service under this section loses all rights to benefits under AS 14.25 based on the claimed credited service. A member may not claim credited service under this section unless the member claims all of the membership service the member has in the teachers' retirement system. A public service benefit does not constitute a normal or early retirement benefit for purposes of qualifying for a conditional service retirement benefit under AS 14.25.125 or AS 39.35.385.

(e) A member whose rights to benefits under AS 14.25 are subject to a qualified domestic relations order may claim credited service under this section. However, the credited service claimed remains subject to the terms of the order.

(f) Notwithstanding AS 14.25.063 and AS 39.35.350, a former member of the teachers' retirement system who is an active member or inactive member of this system may reinstate, under this section, membership service earned under AS 14.25 for which the member received a refund of contributions.

(g) If a member retires under this section and subsequently returns to work for an employer under this system or the teachers' retirement system, benefits under this section shall cease during the period of reemployment and shall recommence when the reemployment is ended. The credited service earned during the period of reemployment may not be added to the credited service claimed for a public service benefit under this section. If a member vests and meets the other eligibility requirements under this system or the teachers' retirement system during the reemployment, the member is entitled to a benefit under AS 14.25 or AS 39.35, as appropriate.

History: (Sec. 3 ch 109 SLA 2000)

Effective Date Notes: Section 3, ch. 109, SLA 2000, which enacted this section, took effect on August 31, 2000.

**SEC. 39.35.380. EARLY RETIREMENT BENEFITS. [REPEALED,
SEC. 55 CH 128 SLA 1977].**

Repealed or Renumbered

**SEC. 39.35.381. ALTERNATE BENEFIT FOR ELECTED PUBLIC
OFFICERS.**

(a) An elected public officer is eligible for a public officer benefit if the officer is retired under AS 14.25 (teachers' retirement system). Only fully paid credited service as an elected public officer of a municipality or other political subdivision, earned while the municipality or political subdivision was an employer under this system and while the person was employed full-time under AS 14.25, may be counted under this section.

(b) Credited service for which contributions were refunded is not creditable under this section unless the refunded contributions have been repaid. For purposes of (a) of this section, a member or former member does not have to be reemployed under this system in order to pay refunded contributions. Compound interest at the rate prescribed by regulation shall be added to the reinstatement indebtedness from the date of the refund to the date of repayment.

(c) The amount of the monthly elected public officer benefit is two percent of the average monthly compensation for service eligible under this section times those years of service.

(d) When an elected public officer eligible to receive credited service under this section dies, the officer's designated beneficiary is entitled to the balance in the officer's employee contribution account.

(e) A person who retires under this section is not entitled to disability or death benefits under AS 39.35.400 - 39.35.440, a minimum benefit under AS 39.35.485, or to medical benefits under AS 39.35.535. Service earned under this section may not be used for vesting under this chapter.

(f) Benefits payable under this section accrue from the first day of the month after which all of the following requirements are met: (1) the elected public officer meets the eligibility requirements of this section; (2) the officer terminates employment under this chapter; and (3) the officer applies for retirement. The benefits are payable the last day of the month. If payment is delayed, a retroactive payment shall be made to cover the period of the delay.

(g) An elected public officer may claim credit under this section for service performed as an elected public officer before May 31, 1989. To claim the service, the elected public officer must have been an elected public officer of a municipality or political subdivision that was an employer under this system during the elected service and must have been employed full-time under AS 14.25 during that time. When the elected public officer claims that service, an indebtedness to the system is established. The amount of the indebtedness is the full actuarial cost of providing benefits for the service claimed. Interest as prescribed by regulation accrues on that indebtedness beginning on July 1, 1989. Any outstanding indebtedness existing at the time the person retires requires an actuarial adjustment to the benefits payable based on that service.

History: (Sec. 3 ch 58 SLA 1989)

SEC. 39.35.385. CONDITIONAL SERVICE RETIREMENT BENEFITS.

(a) Subject to AS 39.35.450, an employee is eligible for a normal retirement benefit at age 60 with at least two years of credited service if the employee also is eligible for a normal retirement salary under AS 14.25 (teachers' retirement system).

(b) Subject to AS 39.35.450, an employee is eligible for an early retirement benefit at age 55 with at least two years of credited service if the employee also is eligible for an early retirement salary under AS 14.25 (teachers' retirement system).

(c) Credited service for which contributions were refunded is not creditable under this section unless the refunded contributions have been repaid. For purposes of (a) and (b) of this section, a member or former member does not have to be reemployed under this system in order to pay refunded contributions. Compound interest at the rate prescribed by regulation shall be added to the reinstatement indebtedness from the date of the refund to the date of repayment.

(d) The monthly amount of a conditional service retirement benefit shall be calculated on the years of fully paid credited service in accordance with AS 39.35.370(c), except that the member may irrevocably elect to substitute one-twelfth of the “average base salary” as defined in AS 14.25.220(5) in place of average monthly compensation.

(e) Benefits payable under this section accrue from the first day of the month (1) in which the member meets the eligibility requirements of this section, (2) following the date of termination, and (3) following application for retirement, and are payable the last day of the month. If payment is delayed, a retroactive payment shall be made to cover the period of deferment. The last payment shall be made for the month in which the member dies or is no longer eligible for a benefit under this section.

(f) Subject to AS 39.35.450, an employee is eligible for a normal retirement benefit at age 60 or an early retirement benefit at age 55 if the employee was first hired as a legislative employee before May 30, 1987, and has at least 60 days of credited service as an employee of the legislature, other than as an employee of the Office of the Ombudsman or the office of victims’ rights, during each of five legislative sessions. An employee who was first hired as a legislative employee on or after May 30, 1987, and is otherwise eligible under this subsection must have at least 80 days of credited service during each of five legislative sessions to receive benefits under this subsection.

History: (Sec. 3 ch 174 SLA 1978; am Sec. 11 ch 82 SLA 1979; am Sec. 37 ch 13 SLA 1980; am Sec. 50, 51 ch 137 SLA 1982; am Sec. 25 - 27 ch 82 SLA 1986; am Sec. 36, 37 ch 117 SLA 1986; am Sec. 9 ch 21 SLA 1987; am Sec. 23 ch 92 SLA 2001)

Delayed Amendment: Under Sec. 24 and 51, ch. 92, SLA 2001, effective July 1, 2006, subsection (f) of this section will read as follows: “(f) Subject to AS 39.35.450, an employee is eligible for a normal retirement benefit at age 60 or an early retirement benefit at age 55 if the employee was first hired as a legislative employee before May 30, 1987, and has at least 60 days of credited service as an employee of the legislature, other than as an employee of the Office of the Ombudsman, during each of five legislative sessions. An employee who was first hired as a legislative employee on or after May 30, 1987, and is otherwise eligible under this subsection must have at least 80 days of credited service during each of five legislative sessions to receive benefits under this subsection.”

Revisors Notes: In 1986, the phrase “Subject to AS 39.35.450” was added at the beginning of (f) of this section in order to be consistent with (a) and (b) of this section and the language of AS 39.35.450, as amended by ch. 117, SLA 1986.

Cross References: For applicability of (f) of this section to certain persons not employed under the public employee's retirement system on July 1, 1979, see Sec. 15, ch. 82, SLA 1979 in the Temporary and Special Acts and Resolves.

Amendment Notes: The 2001 amendment, effective July 1, 2002, inserted "or the office of victims rights" in the first sentence in subsection (f).

Editors Notes: In general, a person's right to benefits under the state's public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the teachers' retirement system. The user is advised to ascertain which version of a particular statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

Section 57, ch. 82, SLA 1986 provides: "Sections 16, 22-23, 25-27, 42-45, and 50 of this Act apply only to members first hired under the Public Employees' Retirement System after June 30, 1986."

The 1987 amendment to (f) is retroactive to July 1, 1979, under Sec. 12, ch. 21, SLA 1987.

SEC. 39.35.389. ALTERNATE BENEFITS FOR EPORS MEMBERS.

(a) Notwithstanding former AS 39.37.050, a former member of the Alaska Territorial Legislature who is receiving a benefit on June 5, 1989 under the Elected Public Officers Retirement System and who has at least 30 years of credited service in the territorial and state legislatures may elect a benefit under this subsection instead of the benefit under former AS 39.37.050. The monthly amount of a benefit under this subsection is the greater of the member's years of credited service multiplied by

(1) the member's average monthly compensation and that amount multiplied by two percent; or

(2) \$100.

(b) Notwithstanding former AS 39.37.060, a surviving spouse receiving a benefit under the Elected Public Officers Retirement System whose spouse met the requirements of (a) of this section at the time of the spouse's death may elect a benefit under this subsection instead of the benefit under former AS 39.37.060. The amount of a benefit under this subsection is 50 percent of the amount calculated for the deceased spouse under (a) of this section.

(c) Benefits payable under this section accrue from the first day of the month following receipt of an application for benefits under this section and are payable on the last day of the month.

History: (Sec. 29 ch 106 SLA 1988)

SEC. 39.35.390. DEFERRED RETIREMENT BENEFIT. [REPEALED, SEC. 55 CH 128 SLA 1977].

Repealed or Renumbered

SEC. 39.35.395. VOLUNTARY CONTRIBUTION BENEFIT.

The balance of the employee's savings account shall be paid in one of the following options as elected by the employee:

- (1) a lump sum payment; or
- (2) a life annuity on a full cash refund or term-certain basis; or
- (3) installments over a designated period of time.

History: (Sec. 35 ch 128 SLA 1977)

SEC. 39.35.400. NONOCCUPATIONAL DISABILITY BENEFITS.

(a) An employee is eligible for a nonoccupational disability benefit if the employee's employment is terminated because of a total and apparently permanent nonoccupational disability, as defined in AS 39.35.680, before the employee's normal retirement date and after five or more years of credited service. A member is not entitled to a nonoccupational disability benefit under this section unless the member files an application for the benefit with the administrator within 90 days after the member terminated employment. The board may waive a filing deadline if there are extraordinary circumstances that resulted in the inability to meet the deadline. The board may delegate the authority to waive a filing deadline under this subsection to the administrator.

(b) The nonoccupational disability benefits accrue beginning the first day of the month following termination of employment as a result of the disability and are payable the last day of the month. If a final determination granting the benefit is not made in time to pay the benefit when due, a retroactive payment shall be made to cover the period of deferment. The last payment shall be for the first month in which the disabled employee

- (1) dies;

(2) recovers from disability;

(3) fails to meet the requirements under (e) of this section or under AS 39.35.415; or

(4) reaches normal retirement age.

(c) If the disabled employee becomes ineligible to receive nonoccupational disability benefits, the employee is entitled to receive a normal or early retirement benefit if the employee would have been eligible for the benefit had employment continued during the period of disability. However, the period of disability does not constitute credited service.

(d) The monthly amount of the nonoccupational disability benefit shall be determined in accordance with AS 39.35.370(c), considering the employee's credited service and compensation before termination of employment.

(e) A disabled employee receiving a nonoccupational disability benefit shall provide the administrator, one year after appointment to disability benefits and once each year thereafter until disability benefits cease, proof of continuing eligibility to receive disability payments under the Social Security Act. If the disabled employee is otherwise ineligible for a social security payment, the employee shall provide the administrator with sufficient medical evidence once each year to demonstrate that disability payments under the Social Security Act would be payable had the employee been otherwise eligible. If the disabled employee fails to provide the administrator with evidence of continuing eligibility for disability payments under the Social Security Act or other medical evidence required by the administrator within 30 days following each anniversary date, the disability benefits from the system shall cease. If that information is subsequently provided to the administrator, benefit payments will resume beginning for the month following that in which the information is provided. When disability payments under the Social Security Act cease, it is the responsibility of the disabled employee to notify the administrator immediately.

(f) A disabled employee's nonoccupational disability benefit terminates when the employee first attains eligibility for normal retirement. At that time, retirement benefits will be calculated under AS 39.35.370(c).

History: (Sec. 21 ch 143 SLA 1960; am Sec. 9 ch 155 SLA 1966; am Sec. 9, 10 ch 109 SLA 1970; am Sec. 10 ch 159 SLA 1972; am Sec. 15 - 17 ch 1 SLA 1974; am Sec. 4 - 8 ch 123 SLA 1976; am Sec. 36, 37 ch 128 SLA 1977; am Sec. 28 - 32 ch 82 SLA 1986; am Sec. 41 ch 68 SLA 2000)

Amendment Notes: The 2000 amendment, effective August 20, 2000, added the second through fourth sentences in subsection (a).

Editors Notes: In general, a person's right to benefits under the state's public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the public employees' retirement system. The user is advised to ascertain which version of the statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

Decisions: Termination because of disability. - In determining whether an employee was terminated because of his disability, the Public Employee's Retirement Board and superior court erred by basing their decisions on the employer's reasons for the termination rather than on the causal relationship between the termination and the employee's disability. *Stalnaker v. M.L.D.*, 939 P.2d 407 (Alaska 1997).

SEC. 39.35.410. OCCUPATIONAL DISABILITY BENEFITS.

(a) An employee is eligible for an occupational disability benefit if employment is terminated because of a total and apparently permanent occupational disability, as defined in AS 39.35.680, before the employee's normal retirement date.

(b) The occupational disability benefits accrue beginning the first day of the month following termination of employment as a result of the disability and are payable the last day of the month. If a final determination granting the benefit is not made in time to pay the benefit when due, a retroactive payment shall be made to cover the period of deferment. The last payment shall be for the first month in which the disabled employee

(1) dies;

(2) recovers from disability;

(3) fails to meet the requirements under (g) of this section or under AS 39.35.415; or

(4) reaches normal retirement age.

(c) If the disabled employee becomes ineligible to receive occupational disability benefits before the normal retirement date, the disabled employee shall then be entitled to receive an early retirement benefit if the employee would have been eligible for the benefit had employment continued during the period of disability. The period of disability constitutes credited service.

(d) The monthly amount of an occupational disability benefit is 40 percent of the disabled employee's gross monthly compensation at the time of termination due to disability.

(e) *[Repealed, Sec. 12 ch 123 SLA 1976].*

(f) An employee is not entitled to an occupational disability benefit unless the employee files an application for it with the administrator within 90 days of the date of terminating employment. If the employee is unable to meet a filing requirement of this subsection, it may be waived by the Public Employees' Retirement Board if there are extraordinary circumstances that resulted in the employee's inability to meet the filing requirement. The board may delegate the authority to waive a filing deadline under this subsection to the administrator.

(g) A disabled employee receiving an occupational disability benefit shall undergo a medical examination as often as the administrator considers advisable but not more frequently than once each year. The administrator shall determine the place of the examination and engage the physician or physicians. If, in the judgment of the administrator, the examination indicates that the retired employee is no longer incapacitated because of a total and apparently permanent occupational disability, the administrator may not issue further disability benefits to the employee.

(h) A disabled employee's occupational disability benefit terminates when the disabled employee first attains eligibility for normal retirement. At that time, the employee's retirement benefit shall be calculated under the provisions of AS 39.35.370(c).

(i) Notwithstanding (h) of this section, at the time a peace officer or fire fighter receiving occupational disability benefits under this section first attains eligibility for normal retirement, the employee shall irrevocably elect to receive retirement benefits in the amount calculated as the

(1) monthly occupational disability benefit calculated under (d) of this section; or

(2) employee's retirement benefit calculated under the provisions of AS 39.35.370(c).

(j) Notwithstanding (b)(3) of this section, a peace officer or fire fighter who retires under (i) of this section is not subject to the requirements of (g) of this section or AS 39.35.415 during retirement.

History: (Sec. 22 ch 143 SLA 1960; am Sec. 11 ch 109 SLA 1970; am Sec. 18 - 21 ch 1 SLA 1974; am Sec. 13 ch 205 SLA 1975; am Sec. 9 - 13 ch 123 SLA 1976; am Sec. 38, 39 ch 128 SLA 1977; am Sec. 38 ch 13 SLA 1980; am Sec. 33 - 39 ch 82 SLA 1986; am Sec. 42 ch 68 SLA 2000; am Sec. 38 ch 59 SLA 2002)

Amendment Notes: The 2000 amendment, effective August 20, 2000, re-wrote subsection (f).

The 2002 amendment, effective June 20, 2002, added subsections (i) and (j).

Editors Notes: In general, a person's right to benefits under the state's public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the public employees' retirement system. The user is advised to ascertain which version of the statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

Chapter 205, SLA 1975, which amended this section, was submitted to the voters by referendum and was rejected.

Decisions: Constitutionality of 1976 amendment to subsections (d) and (g). - The 1976 amendment to subsections (d) and (g) of this section is not violative of Alaska Const., art. XII, Sec. 7 insofar as applied to public safety employees hired before July 1, 1976, who elect to be covered by Public Employees' Retirement System as amended in 1976 and public safety employees hired on or after July 1, 1976. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

The 1976 amendment to subsections (d) and (g) of this section has the effect of diminishing the vested rights of public safety employees hired before July 1, 1976, who choose to receive benefits under the system in effect at the time they were hired and insofar as applied to those employees, the amended subsections are violative of Alaska Const., art. XII, Sec. 7. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

"Employees" construed. - A former employee who had withdrawn his Public Employees' Retirement System (PERS) contributions is not eligible for occupational disability benefits. Only "employees" are eligible for occupational disability benefits under PERS. "Former members" of PERS are not considered "employees." "Former member" includes any employee who has received a total refund of the balance of the employee contribution account, or who has requested in writing a refund of the balance in the employee contribution account. *Waller v. Stalnaker*, 915 P.2d 637 (Alaska 1996).

Work-related aggravation of preexisting condition. - Occupational disability can occur from work-related aggravation of a preexisting condition. *Hester v. State, Pub. Employees' Retirement Bd.*, 817 P.2d 472 (Alaska 1991).

Burden of proof: In occupational disability claims, unlike workers' compensation claims, the employee bears the burden of establishing by a preponderance of the evidence that the disability was proximately caused by an

injury which occurred in the course of employment. *Hester v. State, Pub. Employees' Retirement Bd.*, 817 P.2d 472 (Alaska 1991).

Link between work and injury not shown. - Substantial evidence supported the board's conclusion that there was no proven causal link between claimant's work as police chief and the disabling effects of his Crohn's disease. *Hester v. State, Pub. Employees' Retirement Bd.*, 817 P.2d 472 (Alaska 1991).

The Public Employees' Retirement Board applied the correct legal standard in considering whether an occupational injury had been a "substantial factor" in the employee's disability, and there was substantial evidence to support the Board's conclusion that the employee's disability was caused by a degenerative hip condition unrelated to her work. *Lopez v. Administrator, Pub. Employees' Retirement Sys.*, 20 P.3d 568 (Alaska 2001).

Termination because of disability. - In determining whether an employee was terminated because of his disability, the Public Employee's Retirement Board and superior court erred by basing their decisions on the employer's reasons for the termination rather than on the causal relationship between the termination and the employee's disability. *Stalnaker v. M.L.D.*, 939 P.2d 407 (Alaska 1997).

Quoted in *Rhines v. State*, 30 P.3d 621 (Alaska 2001).

Cited in *Stalnaker v. Williams*, 960 P.2d 590 (Alaska 1998).

Collateral Refs: 67 C.J.S. Officers, Sec. 248.

Determination whether firefighter's disability is service-connected for disability pension purposes. 7 ALR4th 799.

Determination whether peace officer's disability is service-connected for disability pension purposes. 12 ALR4th 1158.

SEC. 39.35.415. REEMPLOYMENT OF DISABLED EMPLOYEES.

An employee appointed to disability benefits under AS 39.35.400 or 39.35.410 shall apply to the division of vocational rehabilitation within 30 days of the date disability benefits commence. The employee shall be enrolled in a rehabilitation program if the employee meets the eligibility requirements of the division of vocational rehabilitation. Unless the employee demonstrates cause, benefits shall terminate at the end of the first month in which a disabled employee

(1) fails to report to the division of vocational rehabilitation;

(2) is certified by the division of vocational rehabilitation as failing to cooperate in a vocational rehabilitation program;

- (3) fails to interview for a job; or
- (4) fails to accept a position offered.

History: (Sec. 40 ch 82 SLA 1986)

SEC. 39.35.420. NONOCCUPATIONAL DEATH BENEFITS.

(a) If the death of an employee occurs from nonoccupational causes after completing less than one year of credited service, the employee's designated beneficiary shall be paid the balance of the employee contribution account. If the death of an employee occurs from nonoccupational causes after completing at least one year but less than five years of credited service, a death benefit shall be paid to the employee's designated beneficiary. The amount of the death benefit shall be the amount set out in (c) of this section.

(b) If the death of a vested member or deferred vested member occurs from nonoccupational causes and the member designated no person other than the surviving spouse as beneficiary to receive nonoccupational death benefits, the surviving spouse may elect to receive either the amounts set out in (c) of this section or a 50 percent joint and survivor option based on credited service to the date of the employee's death or termination. Benefits accrue from the first day of the month following the employee's death and are payable the last day of the month.

(c) If, under AS 39.35.490, a vested or deferred vested member designates as beneficiary to receive nonoccupational benefits someone other than the surviving spouse to whom the member has been married for at least one year, the administrator shall pay the designated beneficiary: (1) the balance of the deceased member's employee contribution account; and (2) a lump-sum death benefit. The amount of the lump-sum death benefit is \$100 times the years of credited service of the deceased member plus \$1,000.

History: (Sec. 23 ch 143 SLA 1960; am Sec. 12 ch 109 SLA 1970; am Sec. 11 ch 159 SLA 1972; am Sec. 22 ch 1 SLA 1974; am Sec. 14, 15 ch 123 SLA 1976; am Sec. 40 ch 128 SLA 1977; am Sec. 52 ch 137 SLA 1982; am Sec. 38 ch 117 SLA 1986)

Collateral Refs: 67 C.J.S. Officers, Sec. 248.

SEC. 39.35.430. OCCUPATIONAL DEATH BENEFIT.

- (a) *[Repealed, Sec. 16 ch 123 SLA 1976].*

(b) If (1) the death of an employee occurs before the employee's retirement and before the employee's normal retirement date, and (2) the proximate cause of death is a bodily injury sustained or a hazard undergone while in the performance and within the scope of the employee's duties, and (3) the injury or hazard is not the proximate result of wilful negligence of the employee, a monthly survivor's pension shall be paid to the surviving spouse. If there is no surviving spouse or if the spouse later dies, the monthly survivor's pension shall be paid in equal parts to the dependent children of the employee. On the date the normal retirement of the employee would have occurred if the employee had lived, monthly payments shall equal the monthly amount of the normal retirement benefit to which the employee, had the employee lived and continued employment until the employee's normal retirement date, would have been entitled with an average monthly compensation as existed at death and the credited service to which the employee would have been entitled.

(c) The first payment of the surviving spouse's pension or of a dependent child's pension shall be made for the month following the month in which the employee dies and payment shall cease to be made beginning with the month in which there is no surviving spouse or no dependent child.

(d) *[Repealed, Sec. 19 ch 123 SLA 1976].*

(e) *[Repealed, Sec. 19 ch 123 SLA 1976].*

(f) If the death of an employee occurs from occupational causes but no surviving spouse or dependent children exist at the time of the death or if the employee designates as beneficiary under AS 39.35.490 someone other than the surviving spouse or dependent children, the employee's designated beneficiary is entitled to receive those benefits available to a beneficiary under AS 39.35.420(c) and an occupational death benefit may not be paid to the surviving spouse or dependent children.

(g) The monthly survivor's pension in (b) of this section for survivors of employees who were not peace officers or fire fighters is 40 percent of the employee's monthly compensation in the month in which the employee dies. The monthly survivor's pension in (b) of this section for survivors of employees who were peace officers or fire fighters is the greater of

(1) 50 percent of the monthly compensation in the month in which the employee dies; or

(2) 75 percent of the employee's retirement benefit calculated under the provisions of AS 39.35.370(c) if the employee had survived to normal retirement age.

(h) If an employee's death is caused by an act of assault, assassination, or terrorism directly related to the person's status as an employee, whether the act occurs on or off the employee's job site, the death shall be considered to have occurred in the performance of and within the scope of the employee's duties for purposes of (b)(2) of this section. If the expressed or apparent motive and intent of the perpetrator of the harm inflicted upon the employee was due to the performance of the employee's job duties or employment, the death shall be considered to be directly related to the employee's status as an employee. An employee's job duties are those performed within the course and scope of the person's employment with an employer.

History: (Sec. 24 ch 143 SLA 1960; am Sec. 13 ch 109 SLA 1970; am Sec. 23 ch 1 SLA 1974; Sec. 16 - 19 ch 123 SLA 1976; am Sec. 41, 42 ch 128 SLA 1977; am Sec. 39 ch 13 SLA 1980; am Sec. 53, 54 ch 137 SLA 1982; am Sec. 39 ch 117 SLA 1986; am Sec. 2 ch 40 SLA 2002; am Sec. 39, 40 ch 59 SLA 2002)

Revisors Notes: Subsection (h) was enacted as subsection (g) and renumbered in 2002.

Amendment Notes: The first 2002 amendment, effective September 5, 2002, added subsection (h).

The second 2002 amendment, effective June 20, 2002, deleted "equal to 40 percent of the employee's monthly compensation in the month in which the employee dies" following "survivor's pension" in the first sentence in subsection (b); and added subsection (g).

Editors Notes: In general, a person's right to benefits under the state's public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the public employees' retirement system. The user is advised to ascertain which version of the statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

Decisions: Constitutionality of 1976 subsection amendment to former subsection (a) and subsection (b). - The 1976 amendment to former subsection (a) and subsection (b) of this section is not violative of Alaska Const., art. XII, Sec. 7 insofar as applied to public safety employees hired before July 1, 1976, who elect to be covered by Public Employees' Retirement System as amended and public safety employees hired on or after July 1, 1976. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

The 1976 amendment to former subsection (a) and subsection (b) of this section had the effect of diminishing the vested rights of public safety employees hired before July 1, 1976, who chose to receive benefits under the system in effect at the time they were hired and insofar as applied to those employees, the amended subsections were violative of Alaska Const., art. XII, Sec. 7. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

SEC. 39.35.440. DEATH AFTER OCCUPATIONAL DISABILITY.

(a) *[Repealed, Sec. 19 ch 123 SLA 1976].*

(b) Upon the death of a disabled employee who is receiving or is entitled to receive an occupational disability benefit, the administrator shall pay the surviving spouse a surviving spouse's pension, equal to 40 percent of the employee's monthly compensation at the termination of employment because of occupational disability. If there is no surviving spouse, the administrator shall pay the survivor's pension in equal parts to the dependent children of the employee. On the date the normal retirement of the employee would have occurred if the employee had lived, the administrator shall adjust the monthly payments to equal the monthly amount of the normal retirement benefit to which the employee, had the employee lived and continued employment until the employee's normal retirement date, would have been entitled with an average monthly compensation as existed at death and the credited service to which the employee would have been entitled. If the death of an employee occurs from occupational causes but no surviving spouse or dependent children exist at the time of the death, or if the employee designates as beneficiary under AS 39.35.490 someone other than the surviving spouse or dependent children, the administrator shall pay the employee's designated beneficiary those benefits available to a beneficiary under AS 39.35.420(c) and may not pay an occupational death benefit to the surviving spouse or dependent children.

(c) The first payment of the surviving spouse's pension or of a dependent child's pension shall accrue from the first day of the month following the employee's death and is payable the last day of the month. The last payment shall be made for the last month in which there is an eligible surviving spouse or child.

(d) *[Repealed, Sec. 55 ch 128 SLA 1977].*

History: (Sec. 25 ch 143 SLA 1960; am Sec. 14, 15 ch 109 SLA 1970; am Sec. 19 - 21 ch 123 SLA 1976; am Sec. 43, 44, 55 ch 128 SLA 1977; am Sec. 55 ch 137 SLA 1982; am Sec. 40 ch 117 SLA 1986)

Editors Notes: In general, a person's right to benefits under the state's public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law

may govern the benefits of some members of the public employees' retirement system. The user is advised to ascertain which version of the statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

SEC. 39.35.450. JOINT AND SURVIVOR OPTION.

(a) Benefits payable under this section are in place of benefits payable under AS 39.35.370, 39.35.385, and former AS 39.35.460. Upon filing an application with the administrator or when a disabled employee first attains eligibility for normal retirement under AS 39.35.400(f) or 39.35.410(h), the employee shall designate the person who is the employee's spouse at the time of appointment to retirement as the contingent beneficiary. However, if the designation of the spouse is revoked under (c) of this section, the employee may designate a dependent approved by the administrator as the contingent beneficiary or may take normal or early retirement under AS 39.35.370 or 39.35.385 or, if the employee was first hired before July 1, 1996, benefit payments under the level income option under former AS 39.35.460. The administrator shall pay benefits under the option elected by the employee. The employee may elect an option that provides that the employee is entitled to receive a reduced benefit payable for life, and, after the employee's death, the contingent beneficiary is entitled to payments in the amount of

(1) 75 percent of the reduced benefit payable for life; or

(2) 50 percent of the reduced benefit payable for life.

(b) The aggregate of the pension payments expected to be paid to an employee and the contingent beneficiary under the options set out in (a) of this section shall be the actuarial equivalent of the pension that the employee is otherwise entitled to receive upon retirement.

(c) An employee may elect or change an option without the approval of the administrator if the election or change is filed in writing with the administrator before the effective date of the employee's retirement. An employee may revoke a joint and survivor option if the employee files with the administrator before the effective date of the employee's retirement a revocation and consent to the revocation signed by the employee's present spouse and each person entitled to benefits under a qualified domestic relations order on forms provided by the administrator. The administrator may waive the requirement for written consent from

(1) a person entitled under the order if the person cannot be located or for another reason established by regulation; or

(2) the spouse if

(A) the employee is not married;

(B) the employee was not married to the spouse during any period of the employee's employment with an employer;

(C) the spouse has no rights to the option because of the terms of a qualified domestic relations order;

(D) the spouse cannot be located;

(E) the employee and the spouse have been married for less than two years and the employee establishes that they are not cohabiting; or

(F) another reason is established under regulations of the administrator.

(d) A member, including a deferred vested member, may, regardless of age, elect a joint and survivor option any time before appointment to receive a retirement benefit.

(e) If either the employee or contingent beneficiary dies before the employee is appointed to retirement, the election becomes inoperative. Once the employee is appointed to retirement, the election is irrevocable. If a retired employee is reemployed and is subsequently reappointed to retirement, those benefits earned during the period of reemployment are subject to the initial election made under this section, unless the contingent beneficiary is deceased. If the contingent beneficiary is deceased, the benefits earned during the period of reemployment are subject to AS 39.35.370 or this section if another contingent beneficiary was elected during the period of reemployment. All other benefits earned during prior periods of employment are subject to the election at the time the employee was appointed to retirement. If death occurs from nonoccupational causes during the period of reemployment, those benefits earned while reemployed are subject to AS 39.35.420(b). All other benefits earned during prior periods of employment are subject to the election at the time the employee was appointed to retirement. If death occurs from occupational causes during the period of reemployment, all benefits earned during all periods of employment are subject to AS 39.35.430(b) and (c).

(f) The employee and any person claiming to be a contingent beneficiary shall file with the administrator a marriage certificate, divorce or dissolution judgment, or other evidence necessary to determine the applicability of this section and the identity of any contingent beneficiary.

(g) If the administrator determines, based on the affidavit of the employee and other evidence that an employee is eligible to elect a form of payment other than a joint and survivor option under this section, and no contrary evidence is presented to the administrator within 60 days after the effective date of the employee's retirement, a claim under this section, made by a spouse or former spouse of the member, may not be paid if payment would result in an increase in actuarial liability to the system.

(h) If an employee fails to elect an option under this section, and if no effective revocation is filed with the administrator, the employee is considered to have elected the option provided in (a)(2) of this section.

History: (Sec. 26 ch 143 SLA 1960; am Sec. 8 ch 235 SLA 1968; am Sec. 12 ch 159 SLA 1972; am Sec. 24 - 26 ch 1 SLA 1974; am Sec. 6 ch 81 SLA 1976; am Sec. 45 ch 128 SLA 1977; am Sec. 41 - 43 ch 117 SLA 1986; am Sec. 15 ch 4 FSSLA 1996; am Sec. 43 ch 68 SLA 2000)

Amendment Notes: The 1996 amendment, effective July 1, 1996, in subsection (a), in the introductory language, substituted "former AS 39.35.460" for "39.35.460" in the first sentence and deleted "or a level income option under AS 39.35.460" from the next-to-last sentence; deleted former paragraph (3), relating to reduced benefits payable during the joint lifetime of the employee and the contingent beneficiary; and made a related stylistic change.

The 2000 amendment, effective August 20, 2000, in subsection (a) added "or, if the employee was first hired before July 1, 1996, benefit payments under the level income option under former AS 39.35.460" at the end of the third sentence and rewrote paragraphs (1) and (2).

Editors Notes: Section 44, ch. 4, FSSLA 1996 provides that nothing in that Act, which amended subsection (a), "modifies or terminates the terms of a collective bargaining agreement in effect on July 1, 1996." Under Sec. 45, ch. 4, FSSLA 1996, the provisions of that Act, which amended subsection (a), are not severable, notwithstanding AS 01.10.030.

**SEC. 39.35.451. SPOUSE SURVIVOR BENEFITS UNDER PUBLIC
EMPLOYEES RETIREMENT ACT OF 1949. [REPEALED,
SEC. 47 CH 59 SLA 2002].**

[Repealed or Renumbered] A person whose spouse is receiving retirement benefits under the Public Employees Retirement Act of 1949 on July 1, 1972 is entitled to survivor benefits for life in the amount of the retirement benefits received by the retired employee. (§ 13 ch 159 SLA 1972)

**SEC. 39.35.455. RIGHTS UNDER QUALIFIED DOMESTIC RELATIONS
ORDER.**

A former spouse shall be treated as a spouse or surviving spouse to the extent required by a qualified domestic relations order. Rights under the order do not take effect until the order is filed with the administrator.

History: (Sec. 44 ch 117 SLA 1986)

Decisions: Cited in Laing v. Laing, 741 P.2d 649 (Alaska 1987).

**SEC. 39.35.460. LEVEL INCOME OPTION. [REPEALED, SEC. 20 CH
4 FSSLA 1996].**

[Repealed or Renumbered] If the payment of a retirement pension begins before age 65, the amount of pension payable before and after that age may be adjusted so that an increased amount will be paid before the time that full social security benefits become available and a reduced amount after that time, so that the employee may receive a more level income for life. The aggregate value of all adjusted payments may not exceed the actuarial equivalent of the value of the pension otherwise payable to the employee.

**SEC. 39.35.470. OTHER FORMS OF PAYMENT. [REPEALED, SEC. 85
CH 59 SLA 1982; SEC. 75 CH 137 SLA 1982].**

[Repealed or Renumbered] If a pension payable under the system is less than \$25 a month, the board may direct that, instead of the pension, the actuarial equivalent of it shall be paid in a lump sum, or in a series of uniform monthly, quarterly, or annual amounts for life or for a designated period of time. (§ 28 ch 143 SLA 1960)

Revisor's note: Section 39.35.485(a) provides that after January 1, 1981 each employee eligible for a benefit under AS 39.35.370 is entitled to at least \$25 a month. Consequently, this section apparently has no legal effect.

SEC. 39.35.475. POST-RETIREMENT PENSION ADJUSTMENT.

(a) Once each year the administrator shall increase benefit payments to eligible disabled members, to persons age 60 or older receiving benefits under this system in the preceding calendar year, and to persons who have received benefits under this system for at least five years who are not otherwise eligible for an increase under this section.

(b) The increase in benefit payments applies to total benefit payments except for the cost-of-living allowance under AS 39.35.480. The amount of the increase is a percentage of the current benefit equal to

(1) the lesser of 75 percent of the increase in the cost of living in the preceding calendar year or nine percent, for recipients who on July 1 are at least 65 years old and for members receiving disability benefits; and

(2) the lesser of 50 percent of the increase in the cost of living in the preceding calendar year or six percent, for recipients who on July 1 are at least 60 but less than 65 years old or for recipients who are less than 60 years old on July 1 but who have received benefits from the system for at least five years.

(c) If a recipient was not receiving benefits during the entire preceding calendar year, the increase in benefits under this section shall be adjusted by multiplying it by the fraction whose numerator is the number of months for which benefits were received in the preceding calendar year and whose denominator is 12.

(d) If at the time of first receiving a retirement benefit a member was receiving a disability benefit under this system, the administrator shall, at the time the member is appointed to retirement, increase the retirement benefit by a percentage equal to the total cumulative percentage increase that has been applied to the member's disability benefit under this section.

(e) When computing an occupational death benefit under AS 39.35.430 or 39.35.440 or a survivor's benefit under AS 39.35.450, adjustments granted to the deceased member or survivor under this section shall be included.

(f) An increase in benefit payments under this section is effective July 1 of each year and is based on the percentage increase in the consumer price index for urban wage earners and clerical workers for Anchorage, Alaska during the previous calendar year as determined by the United States Department of Labor, Bureau of Labor Statistics.

History: (Sec. 9 ch 235 SLA 1968; am Sec. 14 ch 159 SLA 1972; am Sec. 34 ch 146 SLA 1980; am Sec. 57 ch 137 SLA 1982; am Sec. 41 ch 82 SLA 1986)

Editors Notes: In general, a person's right to benefits under the state's public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the teachers' retirement system. The user is advised to ascertain which version of a particular statute is applicable. The version of this statute that was in effect immediately after the 1980 amendments read as follows:

"Sec. 39.35.475. POST RETIREMENT PENSION ADJUSTMENT. (a) When the administrator determines that the cost of living has increased and that the financial condition of the retirement fund permits, he shall increase benefit payments to persons receiving benefits under this system.

"(b) The amount of the increase in benefit payments may not exceed the greater of

"(1) the increase in the cost of living since the date of retirement; or

"(2) four percent of the retirement benefit compounded for each year of retirement.

"(c) If at the time of first receiving a retirement benefit a member was receiving a disability benefit under this system, the administrator shall include the time during which the member received the disability benefit in determining the number of years of retirement under this section.

"(d) An increase in benefit payments under this section is effective July 1 of the year for which the increase is granted.

"(e) The administrator shall implement this section by regulation."

The 1982 amendment, effective July 1, 1982, substituted "lesser" for "greater" in the introductory language of subsection (b).

Section 49, ch 146, SLA 1980 provides: "The retirement benefit payable to a member of the public employees' retirement system who is receiving a normal retirement benefit under AS 39.35.370, July 1, 1980, and who at the time of his retirement was receiving a disability pension under the public employees' retirement system, shall be increased by a percentage equal to the percentage of all post-retirement pension adjustments payable under AS 39.35.475 during the period that the member was receiving a disability benefit."

Collateral Refs: Validity of legislation providing for additional retirement allowances for public employee previously retired. 27 ALR2d 1442.

SEC. 39.35.480. COST-OF-LIVING ALLOWANCE.

(a) While residing in the state, a person receiving a benefit under this chapter who is 65 years of age or older or who is receiving a disability benefit is entitled to receive a monthly cost-of-living allowance in addition to the basic benefit. The amount of this allowance shall be \$50 or 10 percent of the basic benefit, whichever is greater.

(b) A person receiving a cost-of-living allowance under this section shall notify the administrator when the person expects to be absent from the state for a continuous period that exceeds 90 days. After that notification, the person is no longer entitled to receive the monthly cost-of-living allowance, except that a person may be absent from the state for not more than six months without loss of the cost-of-living allowance if the absence is the result of illness and required by order of a licensed physician. Upon returning to the state, and upon notification to the administrator, the person is again entitled to receive the monthly cost-of-living allowance, commencing with the first monthly benefit payment made after notification of the person's return.

(c) While residing in the state, a public employee of the Territory of Alaska who participated in the Public Employees' Retirement Act established by ch. 41 SLA 1949, and who retired before June 22, 1951, is entitled to the cost-of-living allowance equal to 25 percent of the amount received under ch. 41 SLA 1949.

(d) For purposes of this section, "residing in the state" means domiciled and physically present in the state. Being absent from the state for a continuous period of 90 days or less or six months or less when ordered by a physician does not change a person's status as "residing in the state."

History: (Sec. 29 ch 143 SLA 1960; am Sec. 1 ch 109 SLA 1967; am Sec. 27 ch 1 SLA 1974; am Sec. 108 ch 127 SLA 1974; am Sec. 46 ch 128 SLA 1977; am Sec. 12, 13 ch 82 SLA 1979; am Sec. 42 ch 82 SLA 1986)

Editors Notes: Section 57, ch. 82, SLA 1986 provides: "Sections 16, 22-23, 25-27, 42-45, and 50 of this Act apply only to members first hired under the Public Employees' Retirement System after June 30, 1986."

SEC. 39.35.485. MINIMUM BENEFIT.

(a) An employee who is eligible for a benefit calculated in accordance with AS 39.35.370(c) is entitled to a benefit of at least \$25 a month for each year of credited service, not including adjustments made under AS 39.35.340 for military service, AS 39.35.350 for reinstatement of credited service, AS

39.35.360 for credit for earlier service, AS 39.35.370(c) for early retirement, AS 39.35.420 for nonoccupational death benefits, AS 39.35.450 for the survivor's option, former AS 39.35.460 for the level income option, AS 39.35.475 for the post-retirement pension adjustment, and AS 39.35.480 for the cost of living.

(b) *[Repealed, Sec. 55 ch 128 SLA 1977].*

History: (Sec. 15 ch 159 SLA 1972; am Sec. 16 ch 47 SLA 1974; am Sec. 14 ch 205 SLA 1975; am Sec. 24 ch 123 SLA 1976; am Sec. 55 ch 128 SLA 1977; am Sec. 35 ch 146 SLA 1980; am Sec. 58 ch 137 SLA 1982; am Sec. 16 ch 4 FSSLA 1996)

Amendment Notes: The 1996 amendment, effective July 1, 1996, inserted "former" near the end of subsection (a).

Editors Notes: Chapter 205, SLA 1975, which amended this section, was submitted to the voters by referendum and was rejected.

SEC. 39.35.490. DESIGNATION OF BENEFICIARY.

(a) Each employee shall designate the beneficiary or beneficiaries to whom the administrator shall distribute benefits payable under this chapter as a consequence of the employee's death. Notwithstanding a previous designation of beneficiary, a person who is the spouse of an employee at the time of the employee's death automatically becomes the designated beneficiary if the spouse was married to the employee during part of the employee's employment for an employer

(1) except to the extent a qualified domestic relations order filed with the administrator provides for payment to a former spouse or other dependent of the employee; or

(2) unless the employee files a revocation of beneficiary accompanied by a written consent to the revocation signed by the present spouse and each person entitled under the order; however, consent of the present spouse is not required if the member and the present spouse had been married for less than two years on the date of the member's death and if the member established when filing the revocation that the member and the present spouse were not cohabiting.

(b) Except as provided in (a) of this section, the designation may be changed or revoked by the employee without notice to the beneficiary or beneficiaries at any time. If an employee designates more than one beneficiary, each shares

equally unless the employee specifies a different allocation or preference. The designation of beneficiary, a change or revocation of a beneficiary, or a consent to a revocation of a beneficiary shall be made on a form provided by the administrator and is not effective until filed with the administrator.

(c) If an employee fails to designate a beneficiary, or if no designated beneficiary survives the employee, the administrator shall pay the death benefit

(1) to the surviving spouse or, if there is none surviving,

(2) to the surviving children in equal parts or, if there is none surviving,

(3) to the surviving parents in equal parts or, if there is none surviving,

(4) to the employee's estate.

(d) A person claiming entitlement to benefits payable under this chapter as a consequence of an employee's death shall provide the administrator with a marriage certificate, divorce or dissolution decree, or other evidence of entitlement. Documents establishing entitlement may be filed with the administrator immediately after a change in the employee's marital status. If the administrator does not receive notification of a claim before the date 10 days after the employee's death, the person claiming entitlement to the benefits is not entitled to receive from the division of retirement and benefits any benefit already paid by the administrator.

History: (Sec. 30 ch 143 SLA 1960; am Sec. 47 ch 128 SLA 1977; am Sec. 59 ch 137 SLA 1982; am Sec. 45, 46 ch 117 SLA 1986)

Collateral Refs: Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 ALR3d 644.

SEC. 39.35.495. TIME LIMIT FOR APPLICATION.

If no application for benefits or for refund has been filed with the administrator by July 1 following the date on which an inactive member, except an employee on leave-without-pay status or on layoff status, would attain age 75, or if no application for benefits or for refund has been filed with the administrator within the 50 years following the most recent date on which the employee was an active member, benefits or refunds may not be paid under this chapter and the member's records may be destroyed.

History: (Sec. 40 ch 13 SLA 1980)

SEC. 39.35.500. SAFEGUARD OF EMPLOYEE FUNDS HELD BY THE SYSTEM; TRANSFER TO OTHER PLANS.

(a) Except as provided in AS 29.45.030(a)(1) or in (b) of this section, employee contributions and other amounts held in the system are exempt from Alaska state and local taxes. Except as provided in this subsection and in (b) of this section, amounts held on behalf of, or payable to, any employee or other person who is or may become eligible for benefits under the system are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge of any kind, either voluntary or involuntary, before being received by the person entitled to the amount under the terms of the system. An attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of a right to amounts held under the system is void. However, an employee's right to receive benefits or the member's employee contribution account may be assigned

(1) under a qualified domestic relations order; or

(2) to a trust or similar legal device that meets the requirements for a Medicaid-qualifying trust under AS 47.07.020(f) and 42 U.S.C. 1396p(d)(4).

(b) An inactive member may elect to have the taxable portion of an inactive employee contribution account transferred directly to another plan or an individual retirement arrangement qualified under the federal Internal Revenue Code that accepts the transfer.

History: (Sec. 39 ch 143 SLA 1960; am Sec. 10 ch 235 SLA 1968; am Sec. 48 ch 128 SLA 1977; am Sec. 7 ch 62 SLA 1982; am Sec. 47 ch 117 SLA 1986; am Sec. 30 ch 106 SLA 1988; am Sec. 18 ch 31 SLA 1992; am Sec. 16 ch 102 SLA 1994; am Sec. 44, 45 ch 68 SLA 2000)

Revisors Notes: In 1992, "AS 29.45.030(a)(1)" was substituted for "AS 29.45.030(a)(1)(D)" to correct a manifest error in Sec. 18, ch. 31, SLA 1992.

Amendment Notes: The 1992 amendment, effective July 1, 1993, added "Except as provided in AS 29.45.030(a)(1)," to the beginning of the section.

The 1994 amendment, effective September 7, 1994, added the paragraph (1) designation, added paragraph (2), and made a related stylistic change.

The 2000 amendment, effective August 20, 2000, in subsection (a) inserted "or in (b) of this section" in the first sentence, added "Except as provided in this subsection and in (b) of this section," at the beginning of the second

sentence, and inserted “or the member’s employee contribution account” in the last sentence of the introductory language; and added subsection (b).

Decisions: Amendment permitting assignment pursuant to domestic relations order. - The 1986 amendment to this section, permitting retirement benefits to be assigned pursuant to a qualified domestic relations order, merely codified the means by which to distribute an asset, and, as such, the amendment was procedural and could be applied retroactively. *Rice v. Rice*, 757 P.2d 60 (Alaska 1988).

SEC. 39.35.505. EXEMPTION OF EMPLOYEE FUNDS AND BENEFITS.

Employee contributions and other amounts held in the system and retirement benefits payable under this chapter are exempt from levy to enforce the collection of a debt as provided in AS 09.38 (exemptions).

History: (Sec. 7 ch 62 SLA 1982; am Sec. 31 ch 106 SLA 1988)

Revisors Notes: Enacted as AS 39.35.500(b). Renumbered in 1982.

SEC. 39.35.510. VOLUNTARY WAIVER OF BENEFITS.

A retired employee may, in writing, request the administrator to suspend, for any period of time, payment of all or part of the benefits to which the employee is entitled. The administrator shall grant the request and may not require the retired employee to disclose a reason for desiring the suspension. Amounts that are suspended pursuant to the request are forfeited. The retired employee may subsequently terminate the suspension by filing a written notice with the administrator that states a desire to revoke the suspension. Upon receipt of the notice, the administrator shall authorize resumption of the retired employee’s regular pension payments.

History: (Sec. 40 ch 143 SLA 1960; am Sec. 49 ch 128 SLA 1977)

SEC. 39.35.520. ADJUSTMENTS.

(a) When a change or error is made in the records maintained by the system or in the contributions made on behalf of an employee or an error is made in computing a benefit, and, as a result, an employee or beneficiary is entitled to receive from the system more or less than the employee would have been entitled to receive had the records or contributions been correct or had the error not been made, (1) the records, contributions, or error shall be corrected, and (2) as far as practicable, future payments or benefit entitlement shall be

adjusted so that the actuarial equivalent of the pension or benefit to which the employee or beneficiary was correctly entitled shall be paid. An adjustment to contributions shall be picked up by the employer under AS 39.35.160 or treated as an adjustment to the employer's contributions under AS 39.35.270, depending upon the nature of the adjustment. If no future payment is due, a person who was paid any amount to which the person was not entitled is liable for repayment of that amount, and a person who was not paid the full amount to which the person was entitled shall be paid the balance of that amount.

(b) An adjustment that requires the recovery of benefits may not be made under this section if

(1) the incorrect benefit was first paid two years or more before the member or beneficiary was notified of the error;

(2) the error was not the result of erroneous information supplied by the member or beneficiary; and

(3) the member or beneficiary did not have reasonable grounds to believe that the amount of the benefit was in error.

(c) At each regularly scheduled meeting of the Public Employees' Retirement Board, the administrator shall report to the board on all situations since the administrator's last report in which an adjustment has been prohibited under (b) of this section. If the board finds that there is reason to believe that one or more of the conditions set out in (b) of this section have not been met, the administrator shall notify the member or beneficiary that an adjustment will be made to recover the overpayment. A member or beneficiary who receives notice of adjustment under this subsection may appeal to the board for a waiver of the adjustment under AS 39.35.522. An adjustment may not be required while the appeal is pending.

(d) The system shall pay interest on amounts owed to a member or beneficiary. Interest shall be charged on amounts owed to the system by a member or beneficiary if the amount owed is the result of erroneous information supplied by the member or beneficiary, or the member or beneficiary had reasonable grounds to believe the amount of the benefit was in error. The interest paid under this subsection is at the rate established by regulation for indebtedness contributions owed. Interest accrues from the date on which the correct payment was due and continues until an actuarial adjustment to the benefit is effective or the amount owed is paid. Accrued interest in amounts less than the limit established in regulation for writing off small indebtedness and refund balances may not be collected or paid under this subsection.

History: (Sec. 42 ch 143 SLA 1960; am Sec. 4 ch 81 SLA 1976; am Sec. 2 ch 15 SLA 1984; am Sec. 43 ch 82 SLA 1986; am Sec. 41 ch 59 SLA 2002)

Amendment Notes: The 2002 amendment, effective June 20, 2002, in the first sentence in subsection (a) inserted “in the contributions made on behalf of an employee,” substituted “is entitled to receive” for “receives,” inserted “contributions” in two places, and inserted “or benefit entitlement”; and added the second sentence.

Editors Notes: Although Sec. 57, ch. 82, SLA 1986 provided that the amendment to this section made by Sec. 43, ch. 82, SLA 1986, which added subsection (d), applied only to members first hired under the Public Employees’ Retirement System after June 30, 1986, Sec. 57, ch. 82, SLA 1986 was amended by Sec. 34, ch. 106, SLA 1988 to delete Sec. 43, ch. 82, SLA 1986 from the sections applicable only to members first hired after June 30, 1986.

SEC. 39.35.522. WAIVER OF ADJUSTMENTS.

(a) Upon appeal by an affected member or beneficiary under (b) of this section, the board may waive an adjustment or any portion of an adjustment made under AS 39.35.520 if, in the opinion of the board,

(1) the adjustment or portion of the adjustment will cause undue hardship to the member or beneficiary;

(2) *[Repealed, Sec. 60 ch 137 SLA 1982]*. the member is retired or has submitted notification of impending retirement to his employer to be effective no later than 180 days after the adjustment was made, or the beneficiary was eligible to receive or was receiving benefits under this chapter before the adjustment;

(3) *[Repealed, Sec. 60 ch 137 SLA 1982]*. the adjustment will result in a loss of eligibility for benefits for the member or beneficiary or result in a reduction of benefits being received by the member or beneficiary of \$50 per month or more;

(4) the adjustment was not the result of erroneous information supplied by the member or beneficiary;

(5) before the adjustment was made, the member or beneficiary received confirmation from the administrator that the employee’s or beneficiary’s records were correct; and

(6) the member or beneficiary had no reasonable grounds to believe the employee's or beneficiary's records were incorrect before the adjustment was made.

(b) In order to obtain consideration of a waiver under this section, the affected member or beneficiary must appeal to the board in writing within 30 days after receipt of notice that the records have been adjusted.

(c) The board may conduct a hearing on an appeal under this section.

(d) The board may impose conditions on the granting of a waiver which it considers equitable. These conditions may include requiring the member or beneficiary to make additional contributions to the system.

(e) The board may reconsider a ruling under this section under AS 39.35.047(c). Any modification of the initial ruling must be made within 30 days after receipt of a request for reconsideration.

(f) *[Repealed, Sec. 57 ch 68 SLA 2000].*

(g) *[Repealed, Sec. 57 ch 68 SLA 2000].*

History: (Sec. 9 ch 174 SLA 1978; am Sec. 41 ch 13 SLA 1980; am Sec. 60 ch 137 SLA 1982; am Sec. 46 - 48, 57 ch 68 SLA 2000)

Revisors Notes: In 2000, in subsection (e), "AS 39.35.047(c)" was substituted for "AS 39.35.077(c)" to reflect the 2000 renumbering of AS 39.35.077.

Amendment Notes: The 2000 amendment, effective August 20, 2000, in subsection (b) deleted the former second sentence, which read: "The board shall rule on the appeal in writing within 120 days after its receipt"; in subsection (c) deleted ", at its discretion," following "board may" near the beginning and deleted the former second sentence, relating to powers of the board in reaching a decision on appeal; in subsection (e) substituted "under this section under AS 39.35.077(c)" for "under this section upon request of the member or beneficiary or the administrator if the request is received within 30 days after the initial ruling"; and repealed subsections (f) and (g).

***SEC. 39.35.525. LIMITATION ON USE OF CREDITED SERVICE AS
PEACE OFFICER OR FIREMAN. [REPEALED, SEC. 37 CH
106 SLA 1988].***

[Repealed or Renumbered] For the purpose of computing benefits for an employee enrolled as a peace officer or fireman, no more than 30 years of credited service may be considered, except for the purpose of computing

average monthly compensation and then the three consecutive years during the entire period of credited service which produced the highest total compensation shall be used. (§ 16 ch 109 SLA 1970)

SEC. 39.35.527. ELECTION TO TERMINATE COVERAGE AS A PEACE OFFICER OR FIRE FIGHTER.

(a) Any active member may elect to irrevocably relinquish peace officer or fire fighter status with the system and to retain all credited service as if it had been acquired as a member other than a peace officer or fire fighter.

(b) In order to relinquish peace officer or fire fighter status with the system, a person must be an active member and must file a written request with the administrator by July 1, 1984, or within six months after employment as a peace officer or fire fighter, whichever occurs later. No person has more than one opportunity to exercise this option.

(c) As soon as possible after the relinquishment, the administrator shall refund to a person who relinquishes peace officer or fire fighter status under this section a refund equal to the amount by which the balance of the person's accumulated mandatory contributions plus interest exceeds the balance which would exist if all service credit had been acquired as a member other than a peace officer or fire fighter.

(d) A written request to relinquish peace officer or fire fighter status is irrevocable upon filing with the administrator.

History: (Sec. 1 ch 27 SLA 1983)

Revisors Notes: In 1989, the term "fire fighter" was substituted for "fireman" in this section under Sec. 60, ch. 50, SLA 1989.

SEC. 39.35.530. LIMIT ON PENSION.

An employee may not simultaneously receive a pension under more than one section of this chapter. However, benefits under AS 39.35.420(b), 39.35.430, 39.35.440 or 39.35.450 shall be paid in addition to the benefits or service credit a person is entitled to receive because of the person's own membership in the retirement system. An employee may not (1) receive duplicate credit under this system for the same period of service, (2) receive more than one year of service credit in the course of any calendar year, or (3) receive a benefit while accruing service credit under this system, except as provided in this section.

History: (Sec. 42 ch 143 SLA 1960; am Sec. 61 ch 137 SLA 1982)

SEC. 39.35.535. MEDICAL BENEFITS.

(a) Except as provided in (d) of this section, the following persons are entitled to coverage if a benefit recipient elects major medical insurance coverage under this section:

(1) a person receiving a monthly benefit from the system;

(2) the spouse of a person receiving a monthly benefit from the system;

(3) a natural or adopted child of a person receiving a monthly benefit from the system, if the child is a dependent child as defined in AS 39.35.680.

(b) Except as provided in (d) of this section, after an election of coverage under this section, major medical insurance coverage takes effect on the same date that benefits begin, and stops when the member or survivor is no longer eligible to receive a monthly benefit. The coverage for persons age 65 or older is the same coverage available for a person under 65 years of age. The benefits payable to persons age 65 or older supplement any benefits provided under the federal old age, survivors and disability insurance program. The medical premium and optional insurance premiums owed by a member or survivor shall be deducted from the benefit owed to the member or survivor before payment of the benefit.

(c) A benefit recipient may elect major medical insurance coverage in accordance with regulations and under the following conditions:

(1) a person, other than a disabled member or a disabled member who is appointed to normal retirement, must pay an amount equal to the full monthly group premium for retiree major medical insurance coverage if the person is

(A) younger than 60 years of age and has less than

(i) 25 years of credited service as a peace officer under AS 39.35.360 and 39.35.370; or

(ii) 30 years of credited service under AS 39.35.360 and 39.35.370 that is not service as a peace officer; or

(B) of any age and has less than 10 years of credited service;

(2) a person is not required to make premium payments for retiree major medical coverage if the person

(A) is a disabled member;

(B) is a disabled member who is appointed to normal retirement;

(C) is 60 years of age or older and has at least 10 years of credited service; or

(D) has at least

(i) 25 years of credited service as a peace officer under AS 39.35.360 and 39.35.370; or

(ii) 30 years of credited service under AS 39.35.360 and 39.35.370 not as a peace officer.

(d) Receipt under a qualified domestic relations order of a monthly benefit from the system does not entitle a person or the person's spouse or child to insurance coverage under (a) of this section. However, a member's former spouse who receives a monthly benefit under a qualified domestic relations order is entitled to receive major medical insurance coverage if the former spouse

(1) elects the coverage within 60 days after the first monthly benefit paid under the order is mailed first class or otherwise delivered; and

(2) pays the premium established by the administrator for the coverage.

(e) The administrator shall inform members who have requested appointment to retirement that the health insurance coverage available to retired members may be different from the health insurance coverage provided to employees. The administrator shall also notify those members of time limits for selecting optional health insurance coverage and whether the election is irrevocable. A member who has requested appointment to retirement shall indicate in writing on a form provided by the administrator that the member has received the information required by this subsection and whether the member has chosen to receive optional health insurance coverage.

History: (Sec. 2 ch 200 SLA 1975; am Sec. 62 ch 137 SLA 1982; am Sec. 44, 45 ch 82 SLA 1986; am Sec. 48, 49 ch 117 SLA 1986; am Sec. 3 ch 14 SLA 1992; am Sec. 17 ch 4 FSSLA 1996; am Sec. 49 ch 68 SLA 2000; am Sec. 10 ch 57 SLA 2001)

Revisors Notes: Subsection (d) was enacted as (c). Renumbered in 1986.

Minor word changes were made in 1986 to reconcile amendments to the section made by chapters 82 and 117, SLA 1986.

Amendment Notes: The 1992 amendment, effective July 28, 1992, added subsection (e).

The 1996 amendment, effective July 1, 1996, rewrote subsection (c).

The 2000 amendment, effective August 20, 2000, in subsection (b) inserted “years of age” in the second sentence and added the last sentence.

The 2001 amendment, effective July 1, 2001, rewrote subsection (c).

Editors Notes: In general, a person’s right to benefits under the state’s public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the public employees’ retirement system. The user is advised to ascertain which version of the statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

Provisions relating to federal old-age, survivors, and disability insurance benefits may be found in 42 U.S.C. 301 - 1397f (Social Security Act).

Section 57, ch. 82, SLA 1986 provides: “Sections 16, 22-23, 25-27, 42-45, and 50 of this Act apply only to members first hired under the Public Employees’ Retirement System after June 30, 1986.”

Section 44, ch. 4, FSSLA 1996 provides that nothing in that Act, which amended subsection (c), “modifies or terminates the terms of a collective bargaining agreement in effect on July 1, 1996.” Under Sec. 45, ch. 4, FSSLA 1996, the provisions of that Act, which amended subsection (c), are not severable, notwithstanding AS 01.10.030.

Decisions: Cited in *Martin v. Martin*, 52 P.3d 724 (Alaska 2002).

SEC. 39.35.540. MINIMUM BENEFIT. [REPEALED, SEC. 75 CH 137 SLA 1982].

[Repealed or Renumbered] The actuarial equivalent of minimum aggregate benefits payable to or on behalf of an employee may not be less than the total of the balances of his employee contribution account and voluntary savings account as of the date of the termination of his employment. (§ 43 ch 143 SLA 1960)

SEC. 39.35.541. ACTUARIAL REDUCTION OF BENEFIT.

If, as a result of service credit claimed for which there is a corresponding indebtedness existing at retirement, the member's retirement benefit is actuarially reduced and the resultant benefit is less than it would have been if the service credit had not been claimed, the retirement benefit shall be equal to the amount it would have been had the service credit not been claimed.

History: (Sec. 63 ch 137 SLA 1982)

SEC. 39.35.545. DUPLICATE BENEFITS. [REPEALED, SEC. 6 CH 81 SLA 1976].

Repealed or Renumbered

SEC. 39.35.546. TAX EXEMPTION.

(a) Benefits of this chapter are exempt from Alaska state and municipal income taxes.

(b) Benefits paid under this chapter may be subject to federal income taxes as provided in 26 U.S.C. 72.

History: (Sec. 17 ch 109 SLA 1970; am Sec. 50 ch 128 SLA 1977; am Sec. 42 ch 59 SLA 2002)

Amendment Notes: The 2002 amendment, effective June 20, 2002, added subsection (b).

SEC. 39.35.547. EFFECT OF AMENDMENTS.

(a) An amendment of this chapter is not retroactive unless its retroactivity is expressly stated in the amendment.

(b) The monthly amount of a benefit payable under this chapter shall be determined in accordance with the provisions of this chapter in effect on the date of termination of the member's last segment of employment.

History: (Sec. 5 ch 81 SLA 1976; am Sec. 42 ch 13 SLA 1980)

Cross References: For general provision that no statute is retroactive unless expressly stated, see AS 01.10.090.

Editors Notes: In general, a person's right to benefits under the state's public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the public employees' retirement system. The user is advised to ascertain which version of a particular statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

Decisions: Constitutionality of 1976 amendment of AS 39.35.410 and 39.35.430. - Insofar as the vested rights of those public safety employees hired before July 1, 1976, who choose to receive benefits under the public employees retirement system in effect at the time they were hired were diminished by the 1976 amendment of AS 39.35.410(d) and (g) and former 39.35.430(a) and 39.35.430(b), the amended subsections were violative of Alaska Const., art. XII, Sec. 7 as applied to those employees. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

Quoted in *Rice v. Rice*, 757 P.2d 60 (Alaska 1988).

ARTICLE 07. PARTICIPATION BY POLITICAL SUBDIVISIONS AND PUBLIC ORGANIZATIONS

SEC. 39.35.550. REQUEST BY POLITICAL SUBDIVISION TO PARTICIPATE AND ADOPTION OF RESOLUTION.

A municipality or other political subdivision of the state may request to become an employer in this system. The request shall be made after adoption of a resolution by the legislative body of the political subdivision and after approval of the resolution by the person required by law to approve the resolution. A certified copy of the resolution shall be filed with the administrator. If the administrator approves the request for participation, the political subdivision is an employer of the system.

History: (Sec. 44 a ch 143 SLA 1960; am Sec. 1 ch 82 SLA 1976; am Sec. 51 ch 128 SLA 1977)

Decisions: Cited in *Holmberg v. State, Div. of Risk Mgt.*, 796 P.2d 823 (Alaska 1990).

SEC. 39.35.560. REQUEST BY PUBLIC ORGANIZATION TO PARTICIPATE AND ADOPTION OF RESOLUTION.

A public organization may request to become an employer in this system. The request shall be made after adoption of a resolution by the governing body of the public organization. A certified copy of the resolution shall be filed with the administrator. If the administrator approves the request for participation, the public organization is an employer of the system.

History: (Sec. 44 b ch 143 SLA 1960; am Sec. 2 ch 82 SLA 1976; am Sec. 52 ch 128 SLA 1977; am Sec. 43 ch 13 SLA 1980; am Sec. 64 ch 137 SLA 1982)

SEC. 39.35.570. SURVEY TO DETERMINE ESTIMATED COST.

A political subdivision or public organization contemplating participation in this system may request a preliminary survey to determine the estimated cost of participation, the benefits derived, and other information that is appropriate. The political subdivision or public organization requesting the survey shall pay the cost of it.

History: (Sec. 44 c ch 143 SLA 1960)

SEC. 39.35.580. EFFECTIVE DATE OF PARTICIPATION.

The effective date of participation in the system by a political subdivision or public organization is the first day of any month acceptable to the governing body of the political subdivision or public organization and to the commissioner of administration.

History: (Sec. 44 d ch 143 SLA 1960; am Sec. 1 ch 63 SLA 1968; am Sec. 12 ch 235 SLA 1968)

SEC. 39.35.590. DESIGNATION OF ELIGIBLE EMPLOYEES AND AGREEMENT TO CONTRIBUTE.

The political subdivision or public organization shall designate the departments, groups, or other classifications of employees eligible to participate in the system, and shall agree to make contributions each year that are sufficient to meet the normal cost attributable to inclusion of its employees and to amortize the past service cost for its employees over a period not exceeding 40 years.

History: (Sec. 44 d ch 143 SLA 1960)

SEC. 39.35.600. ELIGIBLE EMPLOYEES BOUND TO SYSTEM.

The eligible employees of a participating political subdivision or public organization are bound by the provisions of this system and are entitled to the benefits provided under it.

History: (Sec. 44 e ch 143 SLA 1960)

SEC. 39.35.610. TRANSMITTAL OF CONTRIBUTIONS TO ADMINISTRATOR.

The contributions of an employer and the contributions of its employees shall be transmitted to the administrator as soon as practicable after the close of the payroll period for which the contributions are made. If an employer is delinquent in transferring the contributions for more than 15 days, interest shall be assessed on the outstanding contributions at one and one-half times the most recent actuarially determined rate of earnings for the retirement system from the date that the contributions were originally due.

History: (Sec. 44 f ch 143 SLA 1960; am Sec. 28 ch 1 SLA 1974; am Sec. 53 ch 128 SLA 1977)

SEC. 39.35.615. EFFECT OF TERMINATION BY AMENDMENT OF AGREEMENT.

(a) A political subdivision or public organization may request that its participation agreement be amended. The request may be made only after adoption of a resolution by the legislative body of the political subdivision and approval of the resolution by the person required by law to approve the resolution, or, in the case of a public organization, after adoption of a resolution by the governing body of that public organization. A certified copy of the resolution shall be filed with the administrator. If a political subdivision or public organization amends its participation agreement so as to terminate coverage of a department, group, or other classification of employees, each employee whose coverage is so terminated, regardless of the employee's employment status at the date of termination, shall be considered fully vested in actuarially adjusted accrued retirement benefits as of the date of termination, unless

(1) the employee's contributions have been refunded; or

(2) the political subdivision or public organization amended its participation agreement to exclude coverage for the affected department, group,

or other classification of employees at the written request of a majority of the employees employed in that department, group, or other classification at the time the request was made.

(b) Each employee whose coverage is terminated must, within 60 days after the date of termination, inform the administrator, in writing, whether the employee wishes to obtain a refund or a vested benefit.

(c) Each employee who elects to obtain a refund shall receive a refund of the balance of the employee contribution account. The vesting in accrued benefits for each employee who elects to obtain a refund is voided upon receipt of the refund, and the corresponding credited service may not be reinstated under this chapter. A partial refund may not be allowed under this section.

(d) For each employee who elects to obtain a vested benefit, the amount actuarially determined as necessary to fully fund the benefits to be received shall be transferred first from the employee contribution account and, after the employee contribution account has been exhausted, then from the employer contribution account into the retirement reserve account.

(e) After all of the employees whose coverage is terminated have either received refunds or have been vested in their accrued benefits, the remaining funds in the employer contribution account attributable to those employees shall be refunded to the employer.

(f) Termination of coverage of a department, group, or other classification of employees does not bar future coverage of that department, group, or classification. If coverage of a department, group, or classification is terminated under (a) of this section and the employer later amends its participation agreement to provide renewed coverage of that department, group, or classification, an affected employee may be credited only with future service.

History: (Sec. 44 ch 13 SLA 1980; am Sec. 65, 66 ch 137 SLA 1982; am Sec. 50 ch 68 SLA 2000)

Amendment Notes: The 2000 amendment, effective August 20, 2000, added paragraph (a)(2) and made related stylistic changes.

SEC. 39.35.620. TERMINATION OF PARTICIPATION.

(a) If the contributions are not transmitted to the commissioner of administration within the prescribed time limit, the commissioner may grant an extension. If the political subdivision or public organization is in default at the

end of the extension, participation in the system is terminated, and it shall be sent notice of termination.

(b) All employees of the terminating employer whose contributions have not been refunded, regardless of their employment status at the date of termination, shall be considered fully vested in their adjusted accrued retirement benefits as of the date of termination of the employer.

(c) If the terminating employer has not liquidated past service liability on the date of termination, the accrued vested benefits of all employees of the terminating employer to which the employees are entitled because of service before July 1, 1973, or the date of entry of the employer, whichever is later, shall be reduced by an amount derived by multiplying the accrued vested benefit by a fraction, the numerator of which is the remaining unfunded past service liability and the denominator of which is the actuarially calculated value of benefits earned before July 1, 1973, or the entry date of the employer, whichever is later.

(d) Each employee of a terminating employer must, within 60 days of the employer's termination of participation, inform the administrator, in writing, whether the employee wishes to obtain a refund or a vested benefit.

(e) Each employee who elects to obtain a refund shall receive a refund of the balance, determined as of the date of the employer's termination of participation, of the employee contribution account. The vesting in accrued benefits for each employee who elects to receive a refund is voided upon receipt of the refund and corresponding credited service may not be reinstated under this chapter. A partial refund may not be allowed under this section.

(f) For each employee who elects to obtain a vested benefit, the amount actuarially determined as necessary to fully fund the benefits to be received shall be transferred first from the employee contribution account and, after the employee contribution account has been exhausted, then from the employer contribution account into the retirement reserve account.

(g) After all of the employees of the terminating employer have either received refunds or have been vested in their accrued benefits, the remaining funds in the employer contribution account shall be refunded to the employer and the employer contribution account shall be closed.

(h) Termination of an employer's participation in the system does not bar future participation in the system by that employer. If a previously terminated employer returns to the system employees may be credited only with service subsequent to the date of return. Adjustments made to the accrued benefits of

the employees of the previously terminated employer at the time of the termination may not be altered by that employer's return to participation in the system.

History: (Sec. 44 g ch 143 SLA 1960; am Sec. 29 - 35 ch 1 SLA 1974; am Sec. 109 ch 127 SLA 1974; am Sec. 45 ch 13 SLA 1980; am Sec. 67 ch 137 SLA 1982)

Revisors Notes: The intent of the amendment made by Sec. 109, ch. 127, SLA 1974, was to bring the former language of AS 39.35.620(b) into conformity with art. I, Sec. 3 of the Constitution of the State of Alaska. As the reenactment of that subsection by Sec. 29, ch. 1, SLA 1974 removed the necessity for the change in ch. 127, the reenacted version contained in ch. 1, SLA 1974 prevails.

SEC. 39.35.630. DISTRIBUTION.

A distribution made as a result of termination of participation by an employer may, to the extent that no discrimination in value results, be paid in cash or in annuity contracts, in the discretion of the board.

History: (Sec. 44 h ch 143 SLA 1960)

SEC. 39.35.640. CONCLUSIVENESS OF ACTION TAKEN UPON TERMINATION.

In making a distribution, the determinations, divisions, appraisals, apportionments, and allotments made are final and conclusive and not subject to question.

History: (Sec. 44 i ch 143 SLA 1960)

SEC. 39.35.650. REFUNDS TO EMPLOYERS.

An employer may not receive an amount from the system, except as provided under AS 39.35.615(e) and 39.35.620(g).

History: (Sec. 44 i ch 143 SLA 1960; am Sec. 46 ch 13 SLA 1980; am Sec. 32 ch 106 SLA 1988)

ARTICLE 08. GENERAL PROVISIONS

SEC. 39.35.660. NONGUARANTEED EMPLOYMENT.

This chapter is not a contract of employment between an employer and an employee, nor does it confer a right of an employee to be continued in the employment of an employer, nor is it a limitation of the right of an employer to discharge an employee with or without cause.

History: (Sec. 38 ch 143 SLA 1960)

SEC. 39.35.670. FRAUD.

A person who knowingly makes a false statement, or falsifies or permits to be falsified a record of this system, in an attempt to defraud the system is guilty of a class A misdemeanor.

History: (Sec. 41 ch 143 SLA 1960; am Sec. 51 ch 68 SLA 2000)

Amendment Notes: The 2000 amendment, effective August 20, 2000, inserted “class A” and deleted “, and upon conviction is punishable by a fine of not more than \$500, or by imprisonment for not more than twelve months, or by both” from the end.

SEC. 39.35.675. INCLUSION OF COST-OF-LIVING DIFFERENTIALS IN COMPENSATION AND BENEFITS.

(a) An employee shall make contributions to the system based on compensation including a cost-of-living differential.

(b) The amount of a cost-of-living differential may not be included in the employee’s compensation for purposes of calculating benefits paid under this chapter unless the employee has received a cost-of-living differential for at least 50 percent of the employee’s credited service.

(c) When an employee receives a benefit, and if the employee’s compensation for purposes of calculating the benefit does not include a cost-of-living differential, then the administrator shall refund to the employee the amount of contributions the employee made based on the differential.

(d) In this section “cost-of-living differential” means an adjustment to salary based on the cost of living in the geographic region where the employee works and includes a pay step differential under AS 39.27.020.

History: (Sec. 46 ch 82 SLA 1986; am Sec. 11 ch 57 SLA 2001)

Amendment Notes: The 2001 amendment, effective July 1, 2001, deleted “in a comparable amount or of at least that many steps” following “differential” in subsection (b).

Editors Notes: Section 58, ch. 82, SLA 1986, provides that this section applies “only to members first hired under the Public Employees’ Retirement System after December 31, 1986.”

SEC. 39.35.677. SPECIAL RULES FOR TREATMENT OF QUALIFIED MILITARY SERVICE.

Notwithstanding any contrary provisions of this chapter, with respect to qualified military service, contributions shall be made and benefits and service credit shall be provided in accordance with 26 U.S.C. 414(u).

History: (Sec. 43 ch 59 SLA 2002)

Effective Date Notes: Section 50, ch. 59, SLA 2002 makes this section effective June 20, 2002, in accordance with AS 01.10.070(c).

SEC. 39.35.680. DEFINITIONS.

In this chapter, unless the context otherwise requires,

(1) “active member” means an employee who is employed by an employer, is receiving compensation for seasonal, permanent full-time, or permanent part-time services, and is making contributions to the system;

(2) “actuarial adjustment” means the adjustment necessary to obtain equality in value of the aggregate expected payments under two different forms of pension payments, considering expected mortality and interest earnings on the basis of tables referred to in the information handbook published under AS 39.35.060(8);

(3) “administrator” means the person appointed by the commissioner of administration under AS 39.35.050;

(4) “average monthly compensation” means the result obtained by dividing the compensation earned by an employee during a considered period by the number of months, including fractional months, for which compensation was earned; an employee must have at least 115 days of credited service

in the last payroll year in order for that year to be used as part of the consecutive payroll years; the considered period consists of

(A) for employees first hired before July 1, 1996, the three consecutive payroll years during the period of credited service that yield the highest average;

(B) for employees first hired on or after July 1, 1996, the five consecutive payroll years during the period of credited service that yield the highest average;

(C) if the employee does not have the number of consecutive payroll years required by (A) or (B) of this paragraph, the actual number of months, including fractional months, that the employee worked;

(D) for an employee who has made an election under AS 39.35.300(c) or 39.35.310(c), the actual number of months, including fractional months, that the employee worked;

(E) for a peace officer or fire fighter hired at any time, the three consecutive payroll years during the period of credited service that yield the highest average;

(5) “beneficiary” means a person designated by an employee to receive benefits that may be due from the system upon the employee’s death;

(6) “board” means the Public Employees Retirement Board;

(7) “calendar year” means the period beginning on January 1 and ending on December 31;

(8) “compensation” means the remuneration earned by an employee for personal services rendered to an employer, including employee contributions under AS 39.35.160, cost-of-living differentials only as provided in AS 39.35.675, payments for leave that is actually used by the employee, the amount by which the employee’s wages are reduced under AS 39.30.150(c), and any amount deferred under an employer-sponsored deferred compensation plan, but does not include retirement benefits, severance pay or other separation bonuses, welfare benefits, per diem, expense allowances, workers’ compensation payments, or payments for leave not used by the employee whether those leave payments are scheduled payments, lump-sum payments, donations, or cash-ins; for a member first hired on or after July 1, 1996, compensation does not include remuneration in excess of the limitations set out in 26 U.S.C. 401(a)(17) (Internal Revenue Code);

(9) “credited service” means the number of years, including fractional years, recognized for computing benefits that may be due from the system;

(10) “deferred vested member” means an inactive member who meets the five-year credited service requirement to qualify for a retirement benefit;

(11) “dependent child” means an unmarried child of an employee, including one adopted, who is dependent upon the employee for support and who is either (A) under 19 years old or (B) under 23 years old and registered at and attending on a full-time basis an accredited educational or technical institution recognized by the Department of Education and Early Development; age restrictions set out in this paragraph do not apply to a child who is totally and permanently disabled;

(12) “disabled member” means an employee who is terminated, who has not received a refund from the system and is receiving a disability benefit from the system;

(13) “early retirement” means retirement for a member who is not eligible for normal retirement and who is at least 55 years old and is eligible to receive benefits under AS 39.35.370(b) or under AS 39.35.385(b) or (f);

(14) “elected official” means a person whose compensation results from personal services rendered to an employer as an elected representative;

(15) “employee contribution account” means the total maintained by the system of the employee’s mandatory contributions, voluntary contributions, indebtedness principal, and interest contributions, interest credited to each of those accounts, and adjustments to the accounts in accordance with AS 39.35.100;

(16) “employee savings account” means the account maintained by the system to record the voluntary contributions of each employee, including interest and adjustments to the account in accordance with AS 39.35.100;

(17) “employer” means

(A) the State of Alaska;

(B) a nonprofit regional corporation, but only with respect to village public safety officers employed by the corporation under AS 18.65.670 who have not terminated participation in the system under AS 39.35.127; or

(C) a political subdivision or public organization of the state that participates in the system;

(18) “fiscal year” means the period beginning on July 1 and ending on June 30 of the following calendar year;

(19) “former member” means an employee who is terminated and who has received a total refund of the balance of the employee contribution account, or who has requested in writing a refund of the balance in the employee contribution account, or who is eligible for a refund under AS 39.35.200(b);

(20) “inactive member” means an employee who is terminated and who has not received a refund from the system or an employee on leave-without-pay status or layoff status;

(21) “member” or “employee”

(A) means a person eligible to participate in the system and who is covered by the system;

(B) includes

- (i) an active member;
- (ii) an inactive member;
- (iii) a vested member;
- (iv) a deferred vested member;
- (v) a nonvested member;
- (vi) a disabled member;
- (vii) a retired member;
- (viii) an elected public officer under AS 39.35.381;

(C) does not include

- (i) former members;
- (ii) persons compensated on a contractual or fee basis;
- (iii) casual or emergency workers or nonpermanent employees as defined in AS 39.25.200;

(iv) persons covered by the Alaska Teachers' Retirement System except as provided under AS 39.35.131 and 39.35.381, or persons covered by the optional university retirement program;

(v) employees of the division of marine transportation engaged in operating the state ferry system who are covered by a union or group retirement system to which the state makes contributions;

(vi) justices of the supreme court or judges of the court of appeals or of the superior or district courts of Alaska;

(vii) the administrative director of courts appointed under art. IV, sec. 16 of the state constitution unless the director becomes a member under AS 39.35.158;

(viii) members of the elected public officers' retirement system (former AS 39.37); and

(ix) contractual employees of the legislative branch of state government under AS 24.10.060(f);

(D) may include employees of the division of marine transportation excluded under (C)(v) of this paragraph provided that

(i) the State of Alaska formally agrees to their inclusion through the process of collective bargaining; and

(ii) no collective bargaining agreement has the effect of obligating contributions made by the state under AS 39.30.150 in the event the state resumes participation in the federal social security system;

(22) "military service" means active duty service in the armed forces of the United States;

(23) "nonoccupational disability" means a physical or mental condition that, in the judgment of the administrator, presumably permanently prevents an employee from satisfactorily performing the employee's usual duties for an employer or the duties of another position or job that an employer makes available and for which the employee is qualified by training or education, not including a condition resulting from a cause that the board, in its regulations has excluded;

(24) "non-vested member" means an active or inactive member who does not meet the five-year credited service requirement to qualify for a retirement benefit;

(25) “normal retirement” means retirement for a member who is eligible to receive benefits under AS 39.35.370(a) or under 39.35.385(a) or (f);

(26) “occupational disability” means a physical or mental condition that, in the judgment of the administrator, presumably permanently prevents an employee from satisfactorily performing the employee’s usual duties for an employer or the duties of another comparable position or job that an employer makes available and for which the employee is qualified by training or education; however, the proximate cause of the condition must be a bodily injury sustained, or a hazard undergone, while in the performance and within the scope of the employee’s duties and not the proximate result of the wilful negligence of the employee;

(27) “payroll year” means the period that includes the first pay period ending in January of a year through the last pay period ending in December of that year;

(28) “peace officer” or “fire fighter” means an employee occupying a position as a peace officer, chief of police, regional public safety officer, correctional officer, correctional superintendent, fire fighter, fire chief, or probation officer, but does not include a village public safety officer employed by a village public safety officer program established under AS 18.65.670;

(29) “pension fund” or “fund” means the fund in which the assets of the system, including income and interest derived from the investment of money, are deposited and held;

(30) “permanent full-time” means an employee who is occupying a permanent position that regularly requires working 30 or more hours a week;

(31) “permanent part-time” means an employee who is occupying a permanent position that regularly requires working at least 15 hours but less than 30 hours a week;

(32) “prescribed rate of interest” means the rate of interest used for computing employer contributions, for preparing actuarial tables used by the system and for crediting interest to employee contributions and savings accounts, and for charging interest on employee indebtedness accounts;

(33) “public organization” means an organization or entity

(A) created by the constitution or laws of the state for the purpose of administering state programs;

(B) whose officers and employees are paid by a method other than by the state payroll prepared by the Department of Administration; and

(C) whose employees are not required by law to participate in the system;

(34) “qualified domestic relations order” means a divorce or dissolution judgment under AS 25.24, including an order approving a property settlement, that

(A) creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive all or a portion of employee contribution account or the benefits payable with respect to an employee;

(B) sets out the name and last known mailing address, if any, of the employee and of each alternate payee covered by the order;

(C) sets out the amount or percentage of the employee’s benefit, or of any survivor’s benefit, to be paid to the alternate payee, or sets out the manner in which that amount or percentage is to be determined;

(D) sets out the number of payments or period to which the order applies;

(E) sets out the system to which the order applies;

(F) does not require any type or form of benefit or any option not otherwise provided by this chapter;

(G) does not require an increase of benefits in excess of the amount provided by this chapter, determined on the basis of actuarial value; and

(H) does not require the payment to an alternate payee of benefits that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order;

(35) “retired member” means an employee who is terminated, who has not received a refund from the system and is receiving a benefit other than disability, from the system;

(36) “retirement” means that period of time from the first day of the month following (A) the date of termination and (B) application for retirement, in which a person is appointed to receive a retirement benefit, other than occupational or nonoccupational disability benefit;

(37) “seasonal” refers to an employee who is occupying a position for less than 12 months each year where it is anticipated that the same employee will return to the position when needed and includes a temporary em-

ployee of the legislature if part of the service for the legislature during each calendar year is performed during a legislative session;

(38) “surviving spouse” means the spouse of an employee who has been married to the employee for at least one year at the time of the employee’s death; the one-year marriage requirement does not apply when the employee’s death was an occupational or accidental death;

(39) “system” means the Public Employees’ Retirement System of Alaska;

(40) “vested member” is an active member who meets the five-year credited service requirement to qualify for a retirement benefit.

History: (Sec. 3 ch 143 SLA 1960; am Sec. 2 ch 93 SLA 1962; am Sec. 3 ch 102 SLA 1963; am Sec. 10 ch 155 SLA 1966; am Sec. 14 ch 83 SLA 1967; am Sec. 18 - 21 ch 109 SLA 1970; am Sec. 16 ch 159 SLA 1972; am Sec. 36 ch 1 SLA 1974; am Sec. 110 ch 127 SLA 1974; am Sec. 3 ch 200 SLA 1975; am Sec. 9, 10, 15 ch 205 SLA 1975; am Sec. 5, 6 ch 27 SLA 1976; am Sec. 22, 23 ch 123 SLA 1976; am Sec. 1 ch 141 SLA 1976; am Sec. 7 ch 218 SLA 1976; am Sec. 6, 7 ch 245 SLA 1976; am Sec. 12, 13 ch 263 SLA 1976; am Sec. 54 ch 128 SLA 1977; am Sec. 3 ch 58 SLA 1979; am Sec. 3 ch 67 SLA 1979; am Sec. 14 ch 82 SLA 1979; am Sec. 27 ch 12 SLA 1980; am Sec. 47, 48 ch 13 SLA 1980; am Sec. 36, 37 ch 146 SLA 1980; am Sec. 68 - 73 ch 137 SLA 1982; am Sec. 2, 3 ch 27 SLA 1983; am Sec. 47 - 53 ch 82 SLA 1986; am Sec. 50 ch 117 SLA 1986; am Sec. 33 ch 106 SLA 1988; am Sec. 4 ch 58 SLA 1989; am Sec. 2 ch 60 SLA 1989; am Sec. 6 ch 104 SLA 1989; am Sec. 1 ch 47 SLA 1990; am Sec. 17 ch 6 SLA 1993; am Sec. 18 ch 4 FSSLA 1996; am Sec. 4 ch 22 SLA 1998; am Sec. 52 - 55 ch 68 SLA 2000; am Sec. 11, 12 ch 97 SLA 2001; am Sec. 44 - 46 ch 59 SLA 2002)

Revisors Notes: Reorganized in 1986 to alphabetize the defined terms.

Minor word changes were made in 1989 to reconcile amendments to (21)(C)(iv) of this section by chapters 58 and 104 SLA 1989.

In 1999, in this section, “Department of Education” was changed to “Department of Education and Early Development” in accordance with Sec. 89, ch. 58, SLA 1999.

In the 2000 amendment of paragraph (4), the revisor of statutes deleted the word “and” set out at the end of subparagraph (4)(A) to correct a manifest error.

Cross References - For transition provisions relating to the 1983 amendment deleting “qualified employee of the Department of Fish and Game” from the definition of “peace officer”, see Sec. 4 and 5, ch. 27, SLA 1983, in the Temporary and Special Acts; for applicability of paragraph (35) of this section to certain persons not employed under the public employee’s retirement

system on July 1, 1979, see Sec. 15, ch. 82, SLA 1979 in the Temporary and Special Acts and Resolves; for conversion of credited service by persons employed as probation officers before May 15, 1990, see Sec. 2, ch. 47, SLA 1990 in the Temporary and Special Acts; for legislative intent concerning the 1998 amendment of paragraph (21), see Sec. 1, ch. 22, SLA 1998 in the 1998 Temporary and Special Acts.

Amendment Notes - The 1993 amendment, effective July 1, 1993, deleted “incentive cash awards under AS 39.51.120,” following “workers’ compensation payments,” in paragraph (8).

The 1998 amendment, effective July 30, 1998, rewrote subparagraph (21)(B), added division (21)(C)(ix), and made related stylistic changes.

The 2000 amendment, effective August 20, 2000, in paragraph (4) inserted the language beginning “an employee must have” and ending with the semicolon in the introductory language and added the subparagraph (C) and (D) designations, rewriting the material therein; in paragraph (8) deleted “total” preceding “remuneration” near the beginning and added the language beginning “for a member first hired” at the end; in paragraph (29) inserted “, including income and interest derived from the investment of money,”; and in paragraph (34) inserted “employee contribution account or” in subparagraph (A).

The 2001 amendment, effective March 1, 2002, in paragraph (17), added subparagraph (B) and the subparagraph designations; and, effective October 8, 2001, in paragraph (28), inserted “regional public safety officer,” and added the language beginning “but does not include” to the end.

The 2002 amendment, effective June 20, 2002, in paragraph (2) inserted “the adjustment necessary to obtain” and substituted “referred to in the information handbook published under AS 39.35.060(8)” for “adopted from time to time by the board”; in paragraph (4) added subparagraph (E); and in paragraph (34) added present subparagraph (E) and redesignated former subparagraphs (E)-(G) as subparagraphs (F)-(H).

Editors Notes - Section 4, ch. 58, SLA 1979, purported to add a paragraph to this section, effective if approved in a special election conducted by the Department of Administration among the active members of the public employees’ retirement system. The amendment was rejected.

Section 57, ch. 82, SLA 1986 provides: “Sections 16, 22-23, 25-27, 42-45, and 50 of this Act apply only to members first hired under the Public Employees’ Retirement System after June 30, 1986.”

Section 58, ch. 82, SLA 1986, provides that the definition of “compensation” as repealed and reenacted by sec. 49, ch. 82, SLA 1986 applies “only to members first hired under the Public Employees’ Retirement System after December 31, 1986.”

Chapter 205, SLA 1975, which amended this section, was submitted to the voters by referendum and was rejected.

Section 44, ch. 4, FSSLA 1996 provides that nothing in that Act, which amended the definition of “average monthly compensation,” modifies or terminates the terms of a collective bargaining agreement in effect on July 1, 1996.” Under Sec. 45, ch. 4, FSSLA 1996, the provisions of that Act, which amended the definition of “average monthly compensation,” are not severable, notwithstanding AS 01.10.030.

In general, a person’s right to benefits under the state’s public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the public employees’ retirement system. The user is advised to ascertain which version of the statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

Section 13, ch. 97, SLA 2001 provides that the amendments to this section made by ch. 97, SLA 2001 do “not modify the terms of a contract between the state and a nonprofit regional corporation in existence on the effective date of this Act.” The effective date of Sec. 7, ch. 97, SLA 2001, which amended this section, was March 1, 2002.

Decisions -The thrust of the exemptions in this chapter, the State Personnel Act, AS 39.25.110, and the statutory leave provisions for state employees, AS 39.20.310, is to provide for those public employees who are not susceptible to ordinary recruiting and examining procedures. *Hafling v. Inlandboatmen’s Union*, 585 P.2d 870 (Alaska 1978).

“Employees” construed. - A former employee who had withdrawn his Public Employees’ Retirement System (PERS) contributions is not eligible for occupational disability benefits. Only “employees” are eligible for occupational disability benefits under PERS. “Former members” of PERS are not considered “employees.” “Former member” includes any employee who has received a total refund of the balance of the employee contribution account, or who has requested in writing a refund of the balance in the employee contribution account. *Waller v. Stalnaker*, 915 P.2d 637 (Alaska 1996).

“Occupational disability.” - The Public Employees’ Retirement Board applied the correct legal standard in considering whether an occupational injury had been a “substantial factor” in the employee’s disability, and there was substantial evidence to support the Board’s conclusion that the employee’s disability was caused by a degenerative hip condition unrelated to her work. *Lopez v. Administrator, Pub. Employees’ Retirement Sys.*, 20 P.3d 568 (Alaska 2001).

Presumably permanent disability. - An employee who is seeking occupational or nonoccupational disability benefits must prove that her condition is more likely than not permanent and, if she meets that burden, her condition is presumably permanent and she is entitled to disability benefits. *Stalnaker v. Williams*, 960 P.2d 590 (Alaska 1998).

In determining an employees' entitlement to occupational-disability benefits, the Public Employees' Retirement Board erred by looking for evidence of a permanent, rather than presumably permanent, disability. *Stalnaker v. Williams*, 960 P.2d 590 (Alaska 1998).

"Qualified domestic relations order." - Court had authority to approve a post-dissolution qualified domestic relations order where parties agreed when they dissolved their marriage, eight years earlier to divide husband's retirement benefits, and wife should have been awarded survivor benefits, as an integral part of what the parties agreed to divide. *Zito v. Zito*, 969 P.2d 1144 (Alaska 1998).

Where an original marriage dissolution order includes an agreement to divide the marital interest in retirement benefits, issuance of a post-dissolution qualified domestic relations order neither adds to nor modifies the original judgment; a QDRO simply enforces a court order calling for division of retirement benefits. *Zito v. Zito*, 969 P.2d 1144 (Alaska 1998).

Retirement benefits encompasses survivor benefits. - Barring an express understanding to the contrary, an agreement for equitable division of retirement benefits earned during a marriage presumptively encompasses survivor benefits. *Zito v. Zito*, 969 P.2d 1144 (Alaska 1998).

Applied in *Hester v. State, Pub. Employees' Retirement Bd.*, 817 P.2d 472 (Alaska 1991).

Quoted in *State, Pub. Employees Retirement Bd. v. Cacioppo*, 813 P.2d 679 (Alaska 1991); *Rhines v. State*, 30 P.3d 621 (Alaska 2001).

Cited in *Laing v. Laing*, 741 P.2d 649 (Alaska 1987); *Stalnaker v. M.L.D.*, 939 P.2d 407 (Alaska 1997).

SEC. 39.35.690. SHORT TITLE.

This chapter may be cited as the Public Employees' Retirement System of Alaska.

History: (Sec. 1 ch 143 SLA 1960)

Alaska Statutes

Title 39. Public Officers and Employees.

CHAPTER 30. INSURANCE AND SUPPLEMENTAL EMPLOYEE BENEFITS

Article

1. Group Life and Health Insurance (Secs. 39.30.090--39.30.096)
2. Supplemental Employee Benefits on Withdrawal of Social Security (Secs. 39.30.150--39.30.180)

ARTICLE 02. GROUP LIFE AND HEALTH INSURANCE

SEC. 39.30.090. PROCUREMENT OF GROUP INSURANCE.

(a) The Department of Administration may obtain a policy or policies of group insurance covering state employees, persons entitled to coverage under AS 14.25.168, AS 22.25.090, AS 39.35.535 or former AS 39.37.145, employees of other participating governmental units, or persons entitled to coverage under AS 23.15.136, subject to the following conditions:

(1) A group insurance policy shall provide one or more of the following benefits: life insurance, accidental death and dismemberment insurance, weekly indemnity insurance, hospital expense insurance, surgical expense insurance, dental expense insurance, audiovisual insurance, or other medical care insurance.

(2) Each eligible employee of the state, the spouse and the unmarried children chiefly dependent on the eligible employee for support, and each eligible employee of another participating governmental unit shall be covered by the group policy, unless exempt under regulations adopted by the commissioner of administration.

(3) A governmental unit may participate under a group policy if

(A) its governing body adopts a resolution authorizing participation, and payment of required premiums;

(B) a certified copy of the resolution is filed with the Department of Administration; and

(C) the commissioner of administration approves the participation in writing.

(4) In procuring a policy of group health or group life insurance as provided under this section or excess loss insurance as provided in AS 39.30.091, the Department of Administration shall comply with the dual choice requirements of AS 21.86.310, and shall obtain the insurance policy from an insurer authorized to transact business in the state under AS 21.09, a hospital or medical service corporation authorized to transact business in this state under AS 21.87, or a health maintenance organization authorized to operate in this state under AS 21.86. An excess loss insurance policy may be obtained from a life or health insurer authorized to transact business in this state under AS 21.09 or from a hospital or medical service corporation authorized to transact business in this state under AS 21.87.

(5) The Department of Administration shall make available bid specifications for desired insurance benefits or for administration of benefit claims and payments to (A) all insurance carriers authorized to transact business in this state under AS 21.09 and all hospital or medical service corporations authorized to transact business under AS 21.87 who are qualified to provide the desired benefits; and (B) to insurance carriers authorized to transact business in this state under AS 21.09, hospital or medical service corporations authorized to transact business under AS 21.87, and third-party administrators licensed to transact business in this state and qualified to provide administrative services. The specifications shall be made available at least once every five years. The lowest responsible bid submitted by an insurance carrier, hospital or medical service corporation, or third-party administrator with adequate servicing facilities shall govern selection of a carrier, hospital or medical service corporation, or third-party administrator under this section or the selection of an insurance carrier or a hospital or medical service corporation to provide excess loss insurance as provided in AS 39.30.091.

(6) If the aggregate of dividends payable under the group insurance policy exceeds the governmental unit's share of the premium, the excess shall be applied by the governmental unit for the sole benefit of the employees.

(7) A person receiving benefits under AS 14.25.110, AS 22.25, AS 39.35, or former AS 39.37 may continue the life insurance coverage that was in effect under this section at the time of termination of employment with the state or participating governmental unit.

(8) A person electing to have insurance under (7) of this subsection shall pay the cost of this insurance.

(9) For each permanent part-time employee electing coverage under this section, the state shall contribute one-half the state contribution rate for

permanent full-time state employees, and the permanent part-time employee shall contribute the other one-half.

(10) A person receiving benefits under AS 14.25, AS 22.25, AS 39.35, or former AS 39.37 may obtain auditory, visual, and dental insurance for that person and eligible dependents under this section. The level of coverage for persons over 65 shall be the same as that available before reaching age 65 except that the benefits payable shall be supplemental to any benefits provided under the federal old age, survivors, and disability insurance program. A person electing to have insurance under this paragraph shall pay the cost of the insurance. The commissioner of administration shall adopt regulations implementing this paragraph.

(11) A person receiving benefits under AS 14.25, AS 22.25, AS 39.35, or former AS 39.37 may obtain long-term care insurance for that person and eligible dependents under this section. A person who elects insurance under this paragraph shall pay the cost of the insurance premium. The commissioner of administration shall adopt regulations to implement this paragraph.

(12) Each licensee holding a current operating agreement for a vending facility under AS 23.15.010 - 23.15.210 shall be covered by the group policy that applies to governmental units other than the state.

(b) In this section

(1) “eligible employee” means

(A) an employee who has served in permanent full-time or part-time employment with the same governmental unit for 30 days or more, except an emergency or temporary employee;

(B) an elected or appointed official of a governmental unit, effective upon taking the oath of office; and

(C) a contractual employee of the legislative branch of state government under AS 24.10.060(f) if the employee’s personal services contract provides that the employee is entitled to coverage;

(2) “governmental unit” means the state, a municipality, school district, or other political subdivision of the state, and the North Pacific Fishery Management Council;

(3) “insurance”, “insurance carrier” and “insurance policy” include health care services, health care service contractors and contracts, and health maintenance organizations.

History: (Sec. 1, 2 ch 151 SLA 1955; am Sec. 1 ch 168 SLA 1959; am Sec. 1, 2 ch 105 SLA 1965; am Sec. 1 ch 70 SLA 1968; am Sec. 66 ch 69 SLA 1970; am Sec. 1 ch 123 SLA 1970; am Sec. 1 ch 159 SLA 1972; am Sec. 1, 2 ch 46 SLA 1973; am Sec. 13, 14 ch 47 SLA 1974; am Sec. 2, 3 ch 27 SLA 1976; am Sec. 2 ch 86 SLA 1977; am Sec. 39 ch 177 SLA 1978; am Sec. 1 ch 55 SLA 1979; am Sec. 1 ch 62 SLA 1981; am Sec. 37 ch 137 SLA 1982; am Sec. 1 ch 46 SLA 1984; am Sec. 13, 14 ch 82 SLA 1986; am Sec. 2 ch 38 SLA 1990; am Sec. 2, 3 ch 95 SLA 1990; am Sec. 67, 68 ch 63 SLA 1993; am Sec. 106 ch 56 SLA 1996; am Sec. 3 ch 22 SLA 1998)

Revisors Notes: Subsection (b) was formerly AS 39.30.100. Renumbered in 1987.

Cross References: For the purpose of the 1978 amendatory act, see Sec. 1, ch. 177, SLA 1978 as amended by Sec. 7, ch. 46, SLA 1982, in the 1982 Temporary and Special Acts and Resolves. For limited enrollment period for certain previously ineligible persons to apply for coverage under paragraph (7) of this section, see Sec. 2, ch. 46, SLA 1984 in the Temporary and Special Acts. For legislative intent concerning the 1998 amendment to paragraph (b)(1), see Sec. 1, ch. 22, SLA 1998 in the 1998 Temporary and Special Acts.

Amendment Notes: The 1993 amendment, effective January 1, 1993, rewrote the first sentence and added the present second sentence of paragraph (a)(4), and rewrote paragraph (a)(5).

The 1996 amendment, effective September 9, 1996, substituted “health” for “disability” in paragraph (a)(4).

The 1998 amendment, effective July 30, 1998, added subparagraph (b)(1)(C) and made related stylistic changes.

Editors Notes: Section 87, ch. 63, SLA 1993 provides “[i]f any section of this bill is found to violate the single subject rule it is severed from the rest of the bill.”

AG Opinions: Because health insurance deals with the economic interests of employees and does not deal with fundamental policy; because this section, the group insurance statute, authorizes the Department of Administration to obtain “a policy or policies”; and because this section does not specify what levels of coverage or benefits must be included in the policy (or policies) obtained, the issue of group life and health insurance benefits is negotiable under the Public Employment Relations Act (AS 23.40.070 - 23.40.260). January 23, 1978 Op. Att’y Gen.

To the extent the cost of negotiated group life and health insurance coverage exceeds what the state would have paid under its employer-sponsored plan, the negotiated coverage is subject to legislative approval under AS 23.40.215. January 23, 1978 Op. Att’y Gen.

Decisions: Construction with Human Rights Act. - This section does not evince the intent by the legislature to allow an employer to discriminate on the basis of an employee’s marital status in the provision of health insurance plans. *University of Alaska v. Tumeo*, 933 P.2d 1147 (Alaska 1997).

Article Notes: Administrative Code. For group health and life insurance, see 2 AAC 39.

SEC. 39.30.091. AUTHORIZATION FOR SELF-INSURANCE AND EXCESS LOSS INSURANCE.

Notwithstanding AS 21.86.310 or AS 39.30.090, the Department of Administration may provide, by means of self-insurance, one or more of the benefits listed in AS 39.30.090(a)(1) for state employees eligible for the benefits by law or under a collective bargaining agreement and for persons receiving benefits under AS 14.25, AS 22.25, AS 39.35, or former AS 39.37, and their dependents. The department shall procure any necessary excess loss insurance under AS 39.30.090.

History: (Sec. 69 ch 63 SLA 1993; am Sec. 27 ch 68 SLA 2000)

Amendment Notes: The 2000 amendment, effective August 20, 2000, added the language beginning “and for persons receiving” at the end of the first sentence.

Editors Notes: Section 87, ch. 63, SLA 1993 provides “[i]f any section of this bill is found to violate the single subject rule it is severed from the rest of the bill.”

SEC. 39.30.095. GROUP HEALTH AND LIFE BENEFITS FUND.

(a) The commissioner of administration shall establish the group health and life benefits fund as a special account in the general fund to provide for group life and health insurance under AS 39.30.090 and 39.30.160 or for self-insurance arrangements under AS 39.30.091. The commissioner shall maintain accounts and records for the fund. The fund consists of employer contributions, employee contributions, appropriations from the legislature, and income earned on investment of the fund as provided in (d) of this section.

(b) After obtaining the advice of an actuary, the commissioner of administration shall determine the amount necessary to provide benefits under AS 39.30.090, 39.30.091, and 39.30.160 and, subject to (e) of this section, shall set the rate of employer contribution and employee contribution, if any. With money in the fund, the commissioner of administration shall pay premiums, claims, and administrative costs required under the insurance policies in effect under AS 39.30.090 and 39.30.160, or required under self-insurance arrangements in effect under AS 39.30.091.

(c) The commissioner of administration or the designee of the commissioner is administrator of the fund. The commissioner may contract with

(1) an insurer authorized to transact business in this state under AS 21.09, or a hospital or medical service corporation authorized to transact business in this state under AS 21.87 to reimburse the state for the cost of administering group insurance provided under AS 39.30.090 and 39.30.160; and

(2) a life or health insurer authorized to transact business in the state under AS 21.09, a hospital or medical service corporation authorized to transact business in this state under AS 21.87, or a third-party administrator licensed to transact business in this state for the administration of benefit claims and payments under AS 39.30.091.

(d) If the commissioner of administration determines that there is more money in the fund than the amount needed to pay premiums, benefits, and administrative costs for the current fiscal year, the surplus, or so much of it as the commissioner of administration considers advisable, may be invested by the commissioner of revenue in the same manner as retirement funds are invested under AS 14.25.180.

(e) Notwithstanding (b) of this section, the rate of employer contribution to provide hospital, surgical, dental, audiovisual, and other medical care benefits under AS 39.30.091 is \$515 monthly beginning July 1, 2000; \$575 monthly beginning July 1, 2001; and \$630 monthly beginning July 1, 2002, for the following employees and officials:

(1) employees in the executive branch of the state government, including the governor and lieutenant governor, who are not members of a collective bargaining unit established under the authority of AS 23.40.070 - 23.40.260 (Public Employment Relations Act);

(2) officials and employees of the legislative branch of state government under AS 24;

(3) employees in the judicial branch of state government, including magistrates and other judicial officers, who are not members of a collective bargaining unit established under AS 23.40.070 - 23.40.260 (Public Employment Relations Act).

(f) In this section, “fund” means the group health and life benefits fund.

History: (Sec. 38 ch 137 SLA 1982; am Sec. 57 ch 138 SLA 1986; am Sec. 27, 28 ch 141 SLA 1988; am Sec. 70 - 73 ch 63 SLA 1993; am Sec. 107 ch 56 SLA 1996; am Sec. 6, 7 ch 2 TSSLA 2000)

Revisors Notes: Subsection (e) was enacted as (f). Relettered in 2000, at which time former subsection (e) was relettered as (f) and a conforming amendment was made in subsection (b).

Amendment Notes: The 1993 amendment, effective January 1, 1993, in subsection (a), inserted “or for self-insurance arrangements under AS 39.30.091” in the first sentence; in subsection (b), inserted a section reference in the first sentence and rewrote the second sentence; rewrote subsection (c); and, in subsection (d), inserted “and administrative costs” and made related stylistic changes.

The 1996 amendment, effective September 9, 1996, substituted “health” for “disability” in paragraph (c)(2).

The 2000 amendment, effective July 1, 2000, inserted “, subject to (e) of this section,” in subsection (b) and added subsection (e).

Editors Notes: Section 87, ch. 63, SLA 1993 provides “[i]f any section of this bill is found to violate the single subject rule it is severed from the rest of the bill.”

SEC. 39.30.096. ACCOUNTING AND DISPOSITION OF FEES. [REPEALED, SEC. 28 CH 90 SLA 1991].

[Repealed or Renumbered] The commissioner of administration shall separately account for all fees collected under AS 39.30.095(c) that the department deposits in the general fund. The annual estimates balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of this chapter. (§ 58 ch 138 SLA 1986)

Effective dates - Section 104, ch. 138, SLA 1986, makes this section effective July 1, 1986.

SEC. 39.30.100. [RENUMBERED AS AS 39.30.090(B)].

[Repealed or Renumbered]

(1) “eligible employee” means

(A) An employee who has served in permanent full-time or part-time employment with the same governmental unit for 30 days or more, except an emergency or temporary employee, and

(B) an elected or appointed official of a governmental unit, effective upon taking the oath of office;

(2) “governmental unit” means the state, a municipality, school district, or other political subdivision of the state, and the North Pacific Fishery Management Council;

(3) “insurance,” “insurance carrier” and “insurance policy” include health care services, health care service contractors and contracts. (§ 1 ch 151 SLA 1955; am § 2 ch 105 SLA 1965; am § 3 ch 27 SLA 1976; am § 2 ch 86 SLA 1977; am § 14 ch 82 SLA 1986)

Effect of amendments: The 1976 amendment substituted “permanent full-time or part-time employment” for “full-time employment” and “an emergency” for “a part-time emergency” in paragraph (1)(A).

The 1977 amendment added “and the North Pacific Fishery Management Council” to the end of paragraph (2).

The 1986 amendment, effective July 1, 1986, substituted “municipality, school district” for “borough, municipal corporation” in paragraph (2).

ARTICLE 03. SPECIAL HAZARD INSURANCE

Section

130. Special Hazard Insurance

SEC. 39.30.130. SPECIAL HAZARD INSURANCE.

Upon the request of any state department, the Department of Administration may procure insurance, in addition to workers’ compensation insurance, for employees of the department against accidental death or dismemberment occasioned by special hazards in connection with their employment.

History: (Sec. 1 ch 227 SLA 1970)

ARTICLE 04. SUPPLEMENTAL EMPLOYEE BENEFITS ON WITHDRAWAL FROM SOCIAL SECURITY

Section

150. Contributions

153. Repayment of contributions

155. Duties of the public employee retirement board

160. Benefits

162. Safeguard of money

170. Participation in program

175. Investment of benefit program receipts

180. Definitions

SEC. 39.30.150. CONTRIBUTIONS.

(a) In place of contributions to the federal social security system that would have been required on behalf of an employee had the participating employer belonged to the social security system, the participating employer shall contribute an amount equal to 6.13 percent of the wages of the employee up to the taxable wage base then in effect in the social security system. This contribution shall be paid into an individual employee annuity account in the Department of Administration under the terms of the State of Alaska Supplemental Annuity Plan. The department shall pay 6.13 percent of the wages of the employee up to the taxable wage base then in effect in the social security system into the individual employee annuity account established under this subsection. This wage reduction shall be treated as an employer contribution under 26 U.S.C. 414(h)(2). All costs of establishing and administering the programs established under AS 39.30.150 - 39.30.180 shall be paid from the contributions made to the individual employee annuity accounts under this section.

(b) Employees of the division of marine transportation included in the public employees' retirement system through the process of collective bargaining under AS 39.35.680(21)(D) may, under the terms of a collective bargaining agreement, utilize contributions made under (a) of this section on their behalf to offset the costs of inclusion in the public employees' retirement system; however,

(1) the state is placed under no obligation to continue making contributions under this section if the state resumes participation in the federal social security system;

(2) the bargaining agreement must provide a mechanism for satisfying any residual liabilities that might exist if the state resumes participation in the federal social security system; and

(3) funds contributed under (a) of this section on behalf of employees who are not covered by maritime union contracts may not be obligated or expended to pay any costs associated with the inclusion of marine transportation employees in the public employees' retirement system.

(c) An employee may voluntarily elect additional wage reductions to be paid into special individual employee benefit accounts in the Department of Administration. Money in these accounts may only be used to purchase benefits selected by the employee under the supplemental benefits plan established by the administrator.

History: (Sec. 5 ch 58 SLA 1979; am Sec. 2, 3 ch 135 SLA 1980; am Sec. 16, 17 ch 146 SLA 1980; am Sec. 1, 2 ch 55 SLA 1988)

Editors Notes: Section 8, ch. 55, SLA 1988 provides that the amendments made to this section by ch. 55, SLA 1988 apply only "to contributions due the month after a determination is obtained that amendment of the plan in accordance with this Act will not adversely affect the deferral of taxes."

History Reports: For governor's transmittal letter on SSHB 252, from which ch. 55, SLA 1988 derives, see 1988 House Journal 2151-2153.

SEC. 39.30.153. REPAYMENT OF CONTRIBUTIONS.

Upon termination of employment the amount held on behalf of a terminating employee in the employee's individual employee annuity account shall be paid to the employee under the terms of the State of Alaska Supplemental Annuity Plan.

History: (Sec. 39 ch 137 SLA 1982; am Sec. 3 ch 55 SLA 1988)

Editors Notes: Section 77, ch. 137, SLA 1982, makes this section retroactive to January 1, 1980.

Section 8, ch. 55, SLA 1988 provides that the amendments made to this section by ch. 55, SLA 1988 apply only "to contributions due the month after a determination is obtained that amendment of the plan in accordance with this Act will not adversely affect the deferral of taxes."

History Reports: For governor's transmittal letter on SSHB 252, from which ch. 55, SLA 1988 derives, see 1988 House Journal 2151-2153.

SEC. 39.30.155. DUTIES OF THE PUBLIC EMPLOYEES RETIREMENT BOARD.

(a) The Public Employees Retirement Board established by AS 39.35.030 shall

(1) hold regular and special meetings it considers necessary to carry out its responsibilities relating to the supplemental employee benefit program; all meetings are open to the public and the board shall keep a full record of all its proceedings;

(2) adopt, with modifications it considers proper, regulations recommended by the administrator for carrying out the supplemental employee benefit program, and regulations providing employees the opportunity to periodically change distribution of contributions among the supplemental benefit options listed in AS 39.30.160(a);

(3) consider matters referred to it by the administrator in connection with changes in policy and revisions of the supplemental employee benefit program;

(4) act as an appeals board, hold hearings at the request of an employer, employee, surviving spouse, or a beneficiary on decisions made by the administrator that relate to the payment of benefits under the supplemental employee benefit program, and submit its findings to the administrator;

(5) prescribe policies for the operation of the supplemental employee benefit program and take other action that it considers necessary to carry out the purposes of that program;

(6) advise the Department of Administration concerning the features to be included in the benefit options provided under AS 39.30.160(a).

(b) In this section “administrator” means the administrator of the public employees’ retirement system appointed under AS 39.35.050.

History: (Sec. 18 ch 146 SLA 1980)

SEC. 39.30.160. BENEFITS.

(a) The Department of Administration shall, in accordance with policies prescribed by regulations of the Public Employees Retirement Board, provide to employees for whom special individual employee benefit accounts are established under AS 39.30.150 the following benefit options:

(1) supplemental health benefits,

- (2) supplemental death benefits,
- (3) supplemental disability benefits, and
- (4) supplemental dependent care benefits.

(b) An employee may select the types and amounts of supplemental benefits to be purchased with the money deposited in the employee's special individual employee benefit accounts under AS 39.30.150. The selection must be from the benefit options listed in (a) of this section.

(c) *[Repealed, Sec. 9 ch 55 SLA 1988].*

(d) *[Repealed, Sec. 40 ch 146 SLA 1980].*

(e) Regulations adopted by the Public Employees Retirement Board implementing AS 39.30.150 and this section are not subject to AS 44.62 (Administrative Procedure Act).

History: (Sec. 5 ch 58 SLA 1979; am Sec. 4, 5 ch 135 SLA 1980; am Sec. 19 - 22, 40 ch 146 SLA 1980; am Sec. 4, 5, 9 ch 55 SLA 1988)

History Reports: For governor's transmittal letter of SSHB 252, from which ch. 55, SLA 1988 derives, see 1988 House Journal 2151-2153.

Decisions -Marital property: Supplemental employee benefits are marital property subject to equitable division at divorce. *Mann v. Mann*, 778 P.2d 590 (Alaska 1989).

SEC. 39.30.162. SAFEGUARD OF MONEY.

(a) Except as provided in the State of Alaska Supplemental Annuity Plan, amounts held on behalf of, or payable to, an employee or other person who is or who might become eligible for benefits under the plan are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge of any kind, either voluntary or involuntary, before being received by the person entitled to the amount under the terms of the plan. An attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of a right to amounts held under the plan is void.

(b) Except as provided in AS 09.38.065, amounts held on behalf of, or payable to, an employee or other person who is or who might become eligible for benefits under the plan are exempt from garnishment, execution, or levy.

History: (Sec. 6 ch 55 SLA 1988)

History Reports: For governor's transmittal letter on SSHB 252, from which ch. 55, SLA 1988 derives, see 1988 House Journal 2151-2153.

SEC. 39.30.170. PARTICIPATION IN PROGRAM.

(a) An employer may become a participating employer in the employee benefits program under AS 39.30.150 - 39.30.180, if

(1) the employer participates as an employer in the public employees' retirement system under AS 39.35; and

(2) the employer

(A) is eligible for membership in but has never elected to become a member of the federal social security system; or

(B) withdraws from membership in the federal social security system.

(b) In order to become a participating employer, the employer shall file a request with the commissioner. The request may be made only after adoption of a resolution by the legislative body of a municipality, if the employer is a municipality, or by the board of directors, if the employer is a public organization, and after approval of the resolution by the official required by law to approve the resolution. A certified copy of the resolution shall be filed with the commissioner.

(c) The commissioner shall approve the request if the commissioner finds that the employer has never participated in the federal social security system or has withdrawn from participation in the federal social security system.

(d) The employer may begin participation as a participating employer covered by AS 39.30.150 - 39.30.180 on the date designated by the commissioner.

History: (Sec. 1 ch 135 SLA 1980; Sec. 23 ch 146 SLA 1980)

SEC. 39.30.175. INVESTMENT OF BENEFIT PROGRAM RECEIPTS.

(a) The Alaska State Pension Investment Board is the fiduciary of the mandatory receipts, under AS 39.30.150(a), of the employee benefits program established under AS 39.30.150 - 39.30.180 and has the same powers and duties concerning the management and investment in regard to those receipts as are provided under AS 14.25.180.

(b) The board may provide a range of investment options and permit a participant or beneficiary of the program to exercise control over the assets in the individual employee annuity account established under AS 39.30.150(a). If the board offers investment options, and if a participant or beneficiary exercises control over the assets in the individual employee annuity account,

(1) the participant or beneficiary is not considered a fiduciary for any reason on the basis of exercising that control; and

(2) a person who is otherwise a fiduciary is not liable under this section for any loss, or by reason of any breach, that results from the individual's exercise of control.

(c) If the board is considering entering into a contract or modifying an existing contract concerning the management or investment of the mandatory receipts of the supplemental employee benefits program, the board shall consult with the commissioner of administration before making a decision on the issue.

(d) The board shall develop a contingency plan that addresses the board's response to possible future investment problems.

(e) Except to the extent clearly set out in the terms of the plan document offered by the employer to the employee, the employer is not liable to the employee for investment losses if the prudent investment standard has been met.

(f) In this section, "board" means the Alaska State Pension Investment Board.

History: (Sec. 14 ch 31 SLA 1992)

SEC. 39.30.180. DEFINITIONS.

In AS 39.30.150 - 39.30.180

(1) "commissioner" means the commissioner of the Department of Administration;

(2) "participating employer" means

(A) the State of Alaska; and

(B) an employer

(i) who is an employer as defined in AS 39.35.680;

(ii) who has never participated in or has withdrawn from participation in the federal social security system; and

(iii) whose participation in the supplemental employee benefit program has been approved by the commissioner.

History: (Sec. 1 ch 135 SLA 1980; Sec. 23 ch 146 SLA 1980)

CHAPTER 39.45. PUBLIC EMPLOYEES' DEFERRED COMPENSATION PROGRAM

Section

10. Authority

20. Administration of Program

21. [Repealed]

25. Duties of the Public Employees Retirement Board

30. Investment authority

40. Additional benefits

50. Tax deferred investments

60. Definition

Administrative Code: For deferred compensation plan, see 2 AAC 37, art. 4.

SEC. 39.45.010. AUTHORITY.

The state or a political subdivision of the state may, by contract, agree with an employee to defer, in whole or in part, that employee's salary or wages.

History: (Sec. 1 ch 40 SLA 1973; am Sec. 1 ch 125 SLA 1986)

SEC. 39.45.020. ADMINISTRATION OF PROGRAM.

(a) The administration of the deferred compensation program for state employees is under the direction of the Department of Administration. A political subdivision coming under the provisions of this chapter shall designate the office or official to administer its program.

(b) Payroll deductions are authorized by this chapter and shall be made by the appropriate payroll officer.

(c) The administrator of a deferred compensation program may contract with a private person for providing consolidated billing and other administrative

services. The administrator may contract with an insurance carrier to reimburse the state or political subdivision of the state for the cost of administering the deferred compensation program.

History: (Sec. 1 ch 40 SLA 1973; am Sec. 60 ch 138 SLA 1986)

SEC. 39.45.021. ACCOUNTING AND DISPOSITION OF FEES.
[REPEALED, SEC. 28 CH 90 SLA 1991].

[Repealed or Renumbered] The commissioner of administration shall separately account for all fees collected under AS 39.45.020(c) that the department deposits in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of this chapter. (§ 61 ch 138SLA 1986)

Effective dates: Section 104, ch. 138, SLA 1986, makes this section effective on July 1, 1986.

SEC. 39.45.025. DUTIES OF THE PUBLIC EMPLOYEES RETIREMENT BOARD.

(a) The Public Employees Retirement Board established by AS 39.35.030 shall

(1) hold regular and special meetings it considers necessary to carry out its responsibilities relating to the deferred compensation program for state employees; all meetings are open to the public and the board shall keep a full record of all its proceedings;

(2) adopt, with modifications it considers proper, regulations recommended by the administrator for carrying out the deferred compensation program for state employees;

(3) consider matters referred to it by the administrator in connection with changes in policy and revisions of the deferred compensation program for state employees;

(4) act as an appeals board, hold hearings at the request of an employer, employee, surviving spouse, or a beneficiary on decisions made by the administrator that relate to the deferred compensation program for state employees, and submit its findings to the administrator;

(5) prescribe the policies for the proper operation of the deferred compensation program for state employees and take other action that it considers necessary to carry out the intent and purpose of the program.

(b) In this section “administrator” means the administrator of the deferred compensation program for state employees.

History: (Sec. 38 ch 146 SLA 1980)

SEC. 39.45.030. INVESTMENT AUTHORITY.

(a) The Alaska State Pension Investment Board is authorized, subject to contracts with individual employees, to invest the funds held under a deferred compensation program. The board has the same powers and duties concerning the management and investment in regard to those funds as are provided under AS 14.25.180.

(b) *[Repealed, Sec. 24 ch 31 SLA 1992].*

(c) The board may provide a range of investment options and permit a participant or beneficiary of the program to exercise control over the assets in the individual’s account. If the board offers investment options, and if a participant or beneficiary exercises control over the assets in the individual’s account,

(1) the participant or beneficiary is not considered a fiduciary for any reason on the basis of exercising that control; and

(2) a person who is otherwise a fiduciary is not liable under this section for any loss, or by reason of any breach, that results from the individual’s exercise of control.

(d) If the board is considering entering into a contract or modifying an existing contract concerning the management or investment of funds of the deferred compensation program, the board shall consult with the commissioner of administration before making a decision on the issue.

(e) The board shall develop a contingency plan that addresses the board’s response to possible future investment problems.

(f) Except to the extent clearly set out in the terms of the plan document offered by the employer to the employee, the employer is not liable to the employee for investment losses if the prudent investment standard has been met.

(g) In this section, “board” means the Alaska State Pension Investment Board.

History: (Sec. 1 ch 40 SLA 1973; am Sec. 2, 3 ch 125 SLA 1986; am Sec. 19, 20, 24 ch 31 SLA 1992)

Amendment Notes: The 1992 amendment, effective July 1, 1993, rewrote subsection (a), repealed subsection (b), and added subsections (c)-(g).

SEC. 39.45.040. ADDITIONAL BENEFITS.

The deferred compensation program established under this chapter exists and serves in addition to any existing retirement, pension, or benefit system established by the state or its political subdivisions and may not effect a reduction in benefits receivable under an existing system.

History: (Sec. 1 ch 40 SLA 1973)

Revisors Notes: In 1973, the phrase “may not affect a reduction” was changed to “may not effect a reduction” to correct a manifest typographical error in Sec. 1, ch. 40, SLA 1973.

SEC. 39.45.050. TAX DEFERRED INVESTMENTS.

The administrator of a deferred compensation program under this chapter shall invest only in contracts that allow for deferment of the state and federal income tax until benefits are receivable under the program and shall make appropriate withholding adjustments in each participating employee’s payroll.

History: (Sec. 1 ch 40 SLA 1973)

SEC. 39.45.060. “EMPLOYEE” DEFINED.

In this chapter “employee” means a person, whether appointed, elected, or under contract, who provides services for the state or a political subdivision of the state for which compensation is given.

History: (Sec. 1 ch 40 SLA 1973)

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